

Commission of Inquiry
Into the Wrongful
Conviction of David Milgaard
before
THE HONOURABLE MR. JUSTICE
EDWARD P. MacCALLUM

Transcript of Proceedings
and
Testimony before the Commission
sitting at the
Radisson Hotel at
Saskatoon, Saskatchewan

On Monday, October 31st, 2005

Volume 87

Inquiry Proceedings



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- BY MR. HODSON

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Transcript of Proceedings

(Reconvened at 1:37 p.m.)

COMMISSIONER MacCALLUM: Good afternoon.

ALL COUNSEL: Good afternoon.

THOMAS DAVID ROBERTS CALDWELL, continued:

BY MR. HODSON:

Q Good afternoon, Mr. Caldwell.

A Good afternoon, sir.

Q I just want to -- a couple of points here from last day before I go back to the RCMP interview. When we adjourned on Thursday I was -- we listened to the audiotape of your interview with the RCMP and I had a few questions. I just want to go back, there's a document, Mr. Commissioner, that I have been provided with today by Mr. Frayer, it is a March 15th, 1990 memorandum from Eugene Williams to the file, and we will put it in CaseVault and make it part of the record. It's a document that we didn't have previously. The documents we have in our database from Eugene Williams I think came from David and Joyce Milgaard and the Saskatchewan government. We are expecting to receive formal disclosure from Federal Justice shortly of the balance of their documents. I had asked Mr. Frayer on Thursday to check whether there was



1 anything on the file that related to the following
2 issue and that is the date that Mr. Williams
3 contacted Mr. Caldwell to review the prosecution
4 file for a mention of Larry Fisher. On Thursday
5 when we went through the audiotape Mr. Caldwell,
6 in the audiotape to the RCMP, said it was, I
7 think, February 28th, 1990 or thereabouts which
8 corrected his earlier evidence when he said he
9 thought it was October, '89 and I just want to put
10 this memorandum to him because it relates to some
11 discussions, so again there's no doc ID, but we'll
12 put a doc ID on it and I'll just -- I've only got
13 one copy. Again, it's a March 15th memorandum and
14 just, Mr. Caldwell, you'll recall I think the
15 evidence we heard is that February 28th, 1990 is
16 when Eugene Williams was notified by either Mr.
17 Asper or Mr. Wolch about the call from Sidney
18 Wilson and the name Larry Fisher as a suspect was
19 communicated to Mr. Williams, and so here we have
20 March 15th, 1990. If we can scroll down, move it
21 down, please, and again it talks about a
22 conversation with Mr. Wolch about Linda Fisher's
23 statement and then Rick Pearson's interview of
24 Linda Fisher, and then if we can go to the next
25 page, please, and then T.D.R. Caldwell, it says:



1 "I spoke with Bob Caldwell and after our
2 discussion he agreed to provide:

3 1) investigation report concerning Larry
4 Fisher that was made during the Gail
5 Miller investigation;

6 2) a copy of the local newspaper story
7 involving Mrs. Milgaard and David Asper;

8 3) to make some inquiries concerning
9 retaining the services of a reporter in
10 North Battleford Sask."

11 And I'm presuming that relates to either probably
12 the Linda Fisher interview that happened shortly
13 after. Does any of this assist your memory, Mr.
14 Caldwell, as far as reviewing your file at
15 Mr. Williams' request?

16 A I would have to say it doesn't, Mr. Hodson.

17 Q Do you have any reason to disagree with what
18 Mr. Williams has in his file memorandum?

19 A None in the least, sir.

20 Q I'm done with that document. If we can go back to
21 022161, which is the RCMP transcript, and go to
22 page 022227, and I want to ask you some questions
23 about your statements during this interview and
24 elsewhere about your recollection, sir, of seeing
25 in a police report or on a piece of paper a



1 reference to Detectives Karst and Short talking to
2 David Milgaard's father, Lorne Milgaard. Do you
3 recall that piece of information?

4 A I do.

5 Q And maybe you can just tell us, what is your
6 recollection today, sir, of what you learned and
7 where you learned it from?

8 A About that?

9 Q Yes.

10 A Umm, some -- somewhere along the line I learned of
11 that visit which I'm sure took place by those two
12 policemen to Mr. Milgaard senior, Lorne I believe
13 is his name.

14 Q Yes.

15 A And a statement that he had allegedly made. Now,
16 I thought that it was in a -- I thought there was
17 a statement, Mr. Hodson, covering just that is
18 what I'm trying to say.

19 Q Okay. Let me just back up.

20 A Okay.

21 Q I think the evidence we have heard and the
22 documents we have seen, there's a suggestion that
23 Mr. -- Detective Short and Karst went out to
24 Langenburg in 1969 as part of the investigation,
25 we think maybe March or April of '69, and talked



1 to Mr. and Mrs. Milgaard, being Lorne and Joyce
2 Milgaard, and there was a recorded comment that
3 Lorne Milgaard said, I think words to the effect
4 of, "I knew some day something like this would
5 happen."

6 A Yeah.

7 Q Or some comment, and I'm not so much interested in
8 what he said, but your recollection of when and
9 how you became aware of that.

10 A Okay. Well, obviously sometime later than the
11 visit itself happened, the -- maybe I said I was
12 of the view that there was an actual statement
13 just covering that, in effect, that visit and that
14 statement alone. I still think, Mr. Hodson, that
15 that's the case.

16 Q So if we could just pause there, you have a memory
17 of back in 1970 when you were prosecuting this
18 case of being aware that Lorne Milgaard made a
19 comment to police officers?

20 A Yeah, that would have been when I found out, sir.

21 Q Yeah. And I think you are telling us as well you
22 have a memory of seeing that on a piece of paper
23 in some type of document at that time?

24 A That at least, and what I thought was a very brief
25 statement as opposed to just one line in some



1 other document.

2 Q Right. And this issue was canvassed I think both
3 in the RCMP interview and as well in your
4 examination for discovery in the civil suit which
5 I'll get to later.

6 A Okay.

7 Q And I think I'm correct in stating that the only
8 document that at least the Commission has and that
9 the RCMP had and the participants in the civil
10 suit had that mentioned comments attributed to
11 Lorne Milgaard was the five page theory document
12 or the script document. You know the one I'm
13 talking about?

14 A I do, and that's also my understanding, sir.

15 Q Right. So the only piece of paper that has that
16 comment you -- I think you acknowledged to the
17 RCMP and as well at your discovery -- let me
18 rephrase that. Is the script document, is that
19 the document you think you saw back during the
20 prosecution?

21 A No, but the one I think I saw never surfaced in
22 any form and I'm now, Mr. Hodson, of the view that
23 what I likely saw was that line in the script
24 document either in Inspector Quinn's office or in
25 the Regina court house when I was with Sergeant



1 Pearson.

2 Q And that would be in 1990 or later?

3 A Yeah, whatever, and it was, in effect, just that
4 one sentence I think at the end, but I'm not
5 positive.

6 Q Now, is it possible, Mr. Caldwell, that you would
7 have had the five page script or theory document
8 during the prosecution and that that's what you
9 recall now seeing back then?

10 A Mr. Hodson, I'm sure that didn't happen, I'm sure
11 I never had it during the prosecution.

12 Q And why are you able to say that?

13 A Because when I saw it in the court house in Regina
14 in the prosecution file, it struck me as something
15 I hadn't seen before.

16 Q I just want to -- I don't have the doc ID of that
17 script document handy. Do you have it -- are you
18 able to bring it up? Maybe I'll just identify
19 that. And again just for the record, if we could
20 go to, I think it's the fourth page.

21 A All right.

22 Q You'll see under May 5, '69 Lieutenant Short and
23 Detective Karst:

24 "Father of Milgaard made statement to
25 effect that he was not surprised and had



1 suspected something like this might
2 happen."

3 A Yes.

4 Q And again, Mr. Caldwell, is that possibly -- this
5 document, is this perhaps the document that you
6 recall seeing back during the prosecution of Mr.
7 Milgaard?

8 A Not, Mr. Hodson, I'm sure not during the
9 prosecution. I'm equally satisfied that I saw it
10 both in the Regina court house and in Inspector
11 Quinn's possession at the Saskatoon police
12 station --

13 Q So that --

14 A -- in later phases of the matter, if you will.

15 Q So in 1990?

16 A Whenever -- I'll accept that.

17 Q Or later?

18 A Yeah, yeah, that's correct.

19 Q Now, in this -- if we go back to the RCMP report,
20 the suggestion here, and I can go to parts of
21 this, you seem to indicate that it may have been
22 in a police report. Is it possible that there's a
23 police investigation report that has this
24 information that we don't have that --

25 A Well, I thought that's where I saw it, Mr. Hodson,



1 and I think there were super human efforts made to
2 discover it and I believe they were unsuccessful.
3 I certainly don't know of the existence of that
4 police report, if you will, now.

5 Q Okay. If we can maybe just go back -- just see at
6 the bottom, you say:

7 "Well, I can't, I don't know the date of
8 the visit at this point and I, I can't
9 answer that yes or no. I can't recall,
10 but maybe you could, if you could give
11 me some more information."

12 And Dressler says:

13 "We have no record as to the date."

14 You say:

15 "Well, that, that is in the police
16 report. Do you mean the date they went
17 to Langenburg?"

18 Dressler says:

19 "We do not have a police report."

20 And the next page you are saying:

21 "That is, that exists. I don't have it
22 either, but that police report exists
23 with the, because at the time when, I
24 simply, you know. I can see it in my
25 mind's eye. I don't think I psychically



1 have a copy of it."

2 So again in 1993, it appears at that time you are
3 saying you believe there's a police report that
4 you saw back in 1969, 1970 that referenced Lorne
5 Milgaard's comments?

6 A That's right, sir, I did at that time.

7 Q Are you now telling us that you have a
8 different --

9 A Yeah, I am, to the extent that there were, I
10 think, very serious efforts made to find that
11 report in view of what I said and I'm of the -- I
12 understand it never did surface and therefore my
13 conclusion as to where I saw it, Mr. Hodson, is
14 the one I've just explained of the two places I
15 likely did see it, to wit, on the last entry on
16 the script document in those two locations.

17 Q So today, sir, your evidence is, if I can
18 summarize, that your memory of seeing in written
19 form the reference to the visit by Short and Karst
20 to Lorne Milgaard is a memory from 1990 or
21 thereabouts?

22 A Yes.

23 Q When you look at the script document?

24 A It's -- yes. I can't exactly assign, you know,
25 dates, but that general effect, sir.



1 Q Post conviction then?

2 A Oh, absolutely, yeah.

3 Q If we can go to 061370?

4 COMMISSIONER MacCALLUM: The doc ID on this
5 last one here, what was that, please?

6 MR. HODSON: The page that's up now?

7 COMMISSIONER MacCALLUM: Yeah.

8 MR. HODSON: It is 022227.

9 COMMISSIONER MacCALLUM: Thank you.

10 BY MR. HODSON:

11 Q And 228 are the page numbers. And just 061370, I
12 just want to confirm, this is a letter from the
13 RCMP September 9th, '93, I don't think we need to
14 go through it, but they in fact sent you out the
15 transcript of this interview, had you read through
16 it and other than a couple of, I think,
17 grammatical or typo changes, you accepted the
18 transcript as being accurate?

19 A Yeah. One thing, Mr. Hodson, there was one
20 document which had to be completely redone. What
21 you've just said could apply to the redone
22 version. Now, maybe my counsel could just tell me
23 if I'm on the --

24 Q Are you talking about the transcript?

25 A No, no, one of these interviews that I had with



1 the police came back to me and maybe Ms. Knox
2 could throw some light on that.

3 MS. KNOX: Mr. Commissioner, I can't put
4 exact dates on it, but after the transcript was
5 sent back, Mr. Halyk and Mr. Caldwell as I recall
6 went to Regina and they sat with the
7 transcription person, listened to the tape and
8 the transcript was corrected because she or he,
9 whoever the typist was, had made some errors, but
10 it was simply a matter of taking it, listening to
11 the tape and making the corrections as I
12 understand. However, Mr. Halyk will have to
13 speak to it as he's the one that went with him, I
14 didn't.

15 BY MR. HODSON:

16 Q I think the only point is that the tape that we
17 listened to and the transcript that went with it,
18 you accept that as being accurate?

19 A Oh, yes, sir.

20 Q If we can go to 039104. In fact, 053728, this may
21 deal with it. This is a letter from Mr. Halyk to
22 Sawatsky indicating that you've reviewed the
23 corrected transcript of his conversation and we
24 return it signed on the last page, two minor
25 corrections.



1 A Yeah, that's what was produced by that, Mr.
2 Hodson, and I certainly accepted that.

3 Q If we could then go to 039104, please, and this
4 deals with the Edward Schellenberg issue, Mr.
5 Caldwell, we touched on this last week, and this
6 relates to information that Albert Cadrain
7 provided to you and the police on August 26th,
8 1969 about an incident in Calgary involving Mr.
9 Milgaard and information that Ed Schellenberg had.
10 Do you recall that incident?

11 A I do, yes, sir.

12 Q And I think this is a note prepared by Robert
13 Bruce who was an investigator working on behalf of
14 David Milgaard and I just have some questions that
15 follow here. It says:

16 "I would love to find out if
17 Schellenberg was ever contacted.

18 If he was what did he tell
19 about Cadrain blood/bathtub/
20 virgin/Milgaard story.

21 If he told Caldwell's agents
22 that the story was a crock and Cadrain
23 was nuts it could shed considerable
24 light on how evidence adverse to the
25 prosecution was dealt with. ie



1 destroyed, buried, lost, spoliated."

2 And if we can just go to the next page, 039105,
3 and I dealt with this earlier, this has got your
4 handwritten note up there, "Interview with
5 Cadrain"?

6 A That's right.

7 Q And I think the evidence we heard was that this,
8 date of this police report likely coincided with
9 your interview of Albert Cadrain in preparation of
10 him giving testimony at the preliminary hearing.
11 Is that --

12 A It would -- that's right, sir.

13 Q And during the course of this interview I think
14 you told us that information came to light
15 regarding this Mr. Schellenberg and the police
16 were asked I think by you to follow up on it. Is
17 that correct?

18 A That's all correct, sir.

19 Q And I think you told us that you have no memory of
20 ever hearing back from the police on this issue;
21 is that right?

22 A I did, Mr. Hodson, but it seems to me that in the
23 last few weeks of the inquiry, I think there has
24 been a discovery made that in fact some report did
25 come back.



1 Q Right. If we can call up 045348 --

2 A Okay.

3 Q -- and I've touched on this briefly earlier, and
4 this is a statement that Edward Schellenberg gave
5 to the RCMP in 1993. If you could go to 045351
6 and I think what Albert Cadrain, he talked about
7 an incident in Calgary and indicated that Edward
8 Schellenberg could corroborate his version of
9 events.

10 A Yes, sir.

11 Q And I think, if I can just summarize, I think the
12 police went and talked to Mr. Schellenberg and I
13 think what he ends up saying in this statement is
14 he corroborates Albert Cadrain telling him about
15 the events with the bathtub, etcetera, but that he
16 was not there to see it himself, I think is in
17 summary.

18 A Yeah, that would be my understanding, sir, but I
19 think this is the so-called missing reply.

20 Q Let me just go through this and then I will have a
21 question for you, again this is what the RCMP
22 determined, he talks about an incident and says
23 there are a couple of things I remember Albert
24 telling me about David, and then goes on to tell
25 the story, which is what I summarized, and then if



1 you can go to 045354, and again this is the
2 statement of Edward Schellenberg, and they ask
3 him:

4 "Q Where were you living when the police
5 came to talk to you?

6 A Devon, Alberta. There were two
7 Saskatoon city policemen. They were
8 plain clothesmen. I do not recall
9 their names.

10 Q When, roughly, would that have been?

11 A That would have been in 1969. It was
12 after David was arrested. I know I
13 was there for the summer months.
14 Sometime between June, July and August
15 of 1969.

16 Q Did the police tell you why they had
17 come to see you?

18 A Said they wanted some information
19 about David Milgaard and I believe I
20 told them about these two incidents.
21 The bathtub incident and the milk
22 truck incident."

23 So again it appears from Mr. Schellenberg's
24 statement that the city police did pay him a
25 visit after -- well, presumably after Mr. Cadrain



1 brought this information to your attention. And
2 my question to you, sir, is do you have any
3 recollection of the police getting back to you
4 and telling you about what Mr. Schellenberg had
5 to say back in 1969?

6 A No, I do not, Mr. Hodson.

7 Q If we could then go to 045409. With the
8 information that Mr. Schellenberg had, that he had
9 heard Albert Cadrain tell the story about David
10 Milgaard, would that be any evidence that you
11 could use in the case against David Milgaard?

12 A Now, you said, sir, the information that Albert --
13 could you roughly repeat that?

14 Q Sure. On August 26th, 1969 Albert Cadrain told
15 you about an incident involving David Milgaard in
16 Calgary.

17 A Right.

18 Q And I think you had or the police went to
19 investigate this, this event that Albert Cadrain
20 talked about and talked to Mr. Schellenberg?

21 A Correct.

22 Q And I'm just wondering, and maybe I'm wrongfully
23 assuming, that the purpose of checking with Mr.
24 Schellenberg is to see if you could get some
25 evidence that you might use in your case against



1 Mr. Milgaard?

2 A No, I don't think it was that, Mr. Hodson, but
3 there was some indication that Mr. Milgaard had an
4 unusual sexual life, if you will, and I'm sure
5 this was on the basis of finding out if there's
6 anything to that in case somewhere down the road
7 there might be an application as a dangerous
8 sexual offender or something. Clearly not -- it
9 wouldn't be part of this --

10 Q If we can just go back to 039105 for a moment.

11 A Okay.

12 Q And here's the comment in the police report. This
13 is Ullrich's report talking about this information
14 and it says:

15 "Mr. Caldwell wants Schellenberg
16 interviewed and a statement obtained for
17 him."

18 Yeah, from him, but that's all true, sir.

19 Q Yes. And so again the purpose -- the purpose for
20 which you would get this statement from Mr.
21 Schellenberg, how might you use that at trial?

22 A Not at that trial I don't think at all, sir,
23 unless there were unexpected developments, but
24 there had been some evidence of Mr. Milgaard's
25 sexual proclivities, if you will. It seemed to me



1 that this could be something useful if anything
2 came of that further down the way.

3 Q So if Mr. Schellenberg had actually observed
4 behaviour that you felt fit within this area of
5 evidence, would that be helpful to you?

6 A Not at the trial, sir, in my view.

7 Q But again, you asked to get a statement, obviously
8 some information he had was of value to you?

9 A Yeah, but it was in that sense I've just recounted
10 to you.

11 Q Right. So if Mr. Schellenberg had said yes, I
12 corroborate Albert Cadrain, I saw the same thing
13 he saw, then you would get a statement in case you
14 needed to use it for a dangerous sexual offender?

15 A That would be it, and I don't see any way on the
16 face of it that it could or would be used in has
17 trial.

18 Q I see. And then if Mr. Schellenberg had simply
19 said lookit, I didn't see anything, but Albert
20 Cadrain told me the same story, would that be of
21 any value to you for any purpose?

22 A I don't think so, and including, you know, my
23 assessment of Albert I don't think would be
24 affected by that, unless he showed up and --

25 Q No, let me -- that's my next question.



1 A Okay, very good.

2 Q Let me just get back. Presumably if Mr.
3 Schellenberg had said lookit, a person who
4 witnessed this event told me about it --

5 A Yeah.

6 Q -- it would be hearsay presumably?

7 A Yeah, it would be the -- if he couldn't put it in
8 as evidence, then in my view that would be the end
9 of it.

10 Q Right. And so if Mr. Schellenberg simply said I
11 didn't see it, but Albert Cadrain told me about
12 it --

13 A Uh-huh.

14 Q -- would it be correct to say that that evidence
15 would be of little value to you for any purpose?

16 A That's my view, sir.

17 Q Okay. Now, the next question relates to I think
18 what Mr. Bruce was getting at in his memorandum
19 about whether one of the purposes of your checking
20 out this story with Mr. Schellenberg was related
21 to Albert Cadrain's credibility, and can you tell
22 us -- was that one of the purposes?

23 A No, it was not, sir.

24 Q If we could then go to 045403 -- sorry, 045409,
25 and this is Mr. Sawatsky, November of '93, and



1 this is a follow-up to your interview, and he asks
2 through your counsel three questions:

3 1. Why did you want Schellenberg
4 interviewed?

5 2. Was Mr. Schellenberg, in fact,
6 interviewed, as requested by you, and if
7 so, who conducted the interview?

8 3. What was the outcome of this
9 interview?"

10 And then Sawatsky says:

11 "In conclusion, I would point out that
12 the reason for these questions is that I
13 can find no documentation to suggest, or
14 indicate, that your request was followed
15 up on."

16 Then if I go to 045403 and your answers through
17 your counsel and I wish to have you confirm them:

18 "1. Mr. Caldwell has no recollection as
19 to wanting Schellenberg interviewed, but
20 has no doubt that that was indeed the
21 case.

22 2. Again, Mr. Caldwell has no
23 recollection as to whether in fact Mr.
24 Schellenberg was interviewed and
25 accordingly, as to who conducted the



1 interview. In fact, Mr. Caldwell does
2 not remember ever seeing a report or
3 anything in reference to an interview
4 with Schellenberg. On that basis, Mr.
5 Caldwell would guess that he was not in
6 fact interviewed.

7 3. Outcome of the interview, if any, is
8 as outlined above."

9 And again, at that time it appears that you were
10 not aware of any information that suggested he
11 was interviewed?

12 A That's right, sir.

13 Q Is the balance of that letter accurate?

14 A It is, in the sense that that's what I knew, if
15 you will, of those times.

16 Q If we can call up 022237. And this is a
17 supplementary statement December the 6th, '93,
18 from your earlier RCMP interview, and if we can go
19 to the next page. And at the bottom this just
20 touches on, again, page 64 which we don't need to
21 bring up:

22 "... you mention the fact you recall
23 reading a police report about a visit to
24 Langenburg by Dets. Short and Karst
25 wherein they report Mr. Milgaard's



1 statement to effect that he ...",
2 in effect:

3 "... knew someday something like this
4 would happen.

5 Q During any of your reviews of the
6 prosecution file did you find the police
7 report to which you refer?

8 A No."

9 And then, the next page, they go on to talk about
10 the script document, which is the five-page
11 document, and they identify that on page 4 of
12 that script document reference is made to
13 Mr. Lorne Milgaard's statement, and then the RCMP
14 ask you:

15 "Could this document ...",
16 that being the script document:

17 "... be the police report which you
18 recall reading and to which you make
19 reference on page 64?"

20 And your answer:

21 "No. My recollection is that I saw it
22 in a police report. It also may very
23 well be a case where it was told to me
24 verbally and I have put it into my mind
25 as print. this "script document" was



1 not part of my file. There was no
2 reason for me to have it."

3 And, again, is that truthful and accurate?

4 A Yes, I think all those things are accurate, Mr.
5 Hodson. I did recall it was a police report, I
6 realized that I may have, you know, transmitted
7 this into my mind as having been in print, and the
8 script document, again I reiterated, was not part
9 of my file, where that one-line thing did appear,
10 sir.

11 Q And if we could just go down to the bottom,
12 please. And the RCMP ask you about the (V1)-,
13 (V2)----- lab reports, and remember I showed you
14 that earlier, and a police report, we went through
15 those documents on your files that referred to
16 (V2)----- and (V1)-?

17 A Yes sir.

18 Q And they ask you:

19 "Can tell us if you recall reading these
20 materials during your review in 1969 and
21 what conclusions you drew from them?

22 A Don't recall reading through them now.
23 Undoubtedly I read them at the time
24 and undoubtedly found that they had
25 nothing to do with the case. They



1 were irrelevant to both the
2 prosecution and the defence in my view
3 at the time."

4 And is that accurate and truthful?

5 A Yes, sir.

6 Q If we could then go ahead to 032805, please. And
7 on -- last week I went through the allegations
8 that were made against you, Mr. Caldwell, as part
9 of the RCMP investigation, and this report was
10 issued August 15th, 1994 by Alberta Justice, and I
11 think this was a report based upon the RCMP
12 investigation report and I just want to touch on a
13 couple parts of this. If we could go to page
14 032807, again this is how the authors of this
15 report, who were Neil McCrank and Bruce Fraser, as
16 to what they were looking into:

17 "Allegations of criminal wrongdoing were
18 made against the Saskatoon City Police
19 and the Saskatchewan Department of
20 Justice, essentially suggesting a
21 concealment of evidence by the police
22 and prosecutors resulting in a cover-up
23 and a miscarriage of justice relating to
24 David Milgaard."

25 Would that be an accurate summary --



1 A It --

2 Q -- of what you understood the purpose of the RCMP
3 investigation to be?

4 A Yes, sir.

5 Q And if we can go to the next page, and the authors
6 actually set out the section of the *Criminal Code*,
7 139, about obstruction of justice. And did you
8 understand, sir, that, '93-'94, that that's what
9 the RCMP and Alberta Justice were investigating;
10 whether you, amongst others, had committed a
11 Criminal Code offence for obstruction of justice?

12 A Yes, sir.

13 Q And then the next page, again what Mr. Fraser and
14 Mr. McCrank say:

15 "Therefore, we accept the position in
16 law that if the Saskatoon City Police,
17 or members of the Saskatoon City Police,
18 or members of Saskatchewan Justice, such
19 as the trial prosecutor, or the
20 appellate counsel wilfully did anything
21 during the investigation and/or the
22 prosecution with the intended purpose to
23 convict a person they knew was innocent,
24 or to protect a person they knew was
25 guilty, that amounts to attempting to



1 obstruct, pervert or defeat the course
2 of justice in a judicial proceeding, and
3 that offence would be made out. The
4 evidence must support that an individual
5 specifically intended to defeat the
6 course of justice and committed an act
7 which had a tendency to hinder the
8 proper judicial disposition of the
9 proceedings in *R v. Milgaard*."

10 And, again, would that have been your
11 understanding of what was being investigated
12 against you?

13 A Yes, it would.

14 Q If we could then go to 032815. And we've covered
15 most of this, Mr. Caldwell, so I'll just quickly
16 go through what this report -- this just sets out
17 what the allegations are against you and I just
18 wish to confirm with you, sir, that that was your
19 understanding at the time of what it was they were
20 investigating you for. First:

21 "It is alleged that Caldwell consciously
22 connected the Miller murder with the
23 unsolved sexual assaults and failed to
24 disclose to Milgaard's counsel any
25 details of these alleged offences."



1 And then, if we can go to the next page, and then
2 they go to break them down into various
3 categories, i) the:

4 "Failure to Disclose Witnesses that were
5 at Avenue "N",
6 and I think we've covered that last week; next
7 page, ii), the:

8 "Failure to Disclose the Evidence of Two
9 Witnesses Who Were in the Alley Near the
10 Murder",
11 and that was Merriman and Indyk, and I questioned
12 you about that last day:

13 "iii) Failure to disclose the evidence
14 of the (V4)--- assault",
15 again we touched on that; bottom:

16 "iv) Failure to disclose evidence
17 relating to whether there was blood on
18 Milgaard's clothing and whether
19 Milgaard's behaviour was unusual after
20 the alleged murder",

21 I don't think I specifically asked you about that
22 but I think in your RCMP interview you indicated
23 that all of these people either testified, being
24 Rasmussen, John or Danchuk, and therefore
25 evidence about blood either was -- or the lack of



1 blood either was brought out or could be brought
2 out; is that fair?

3 A I believe so, sir.

4 Q And then the next page, number:

5 "2. It is alleged that Caldwell
6 destroyed a portion of his file in order
7 to further the "cover-up." "

8 Again, I think I've asked you that, if not, did
9 you destroy any part of your file?

10 A No I did not.

11 Q "3. It is alleged that Caldwell may have
12 authored the five-page police report
13 (investigation summary) which was used
14 to engineer the witness statements from
15 John and Wilson."

16 And I've asked you that question, and I think you
17 said no, that's not your document?

18 A That's correct, Mr. Hodson.

19 Q And I believe the Commission has heard evidence
20 from Mr. Raymond Mackie that suggests he may have
21 been the author. Number:

22 "4. It is alleged that Caldwell seemed
23 to be unusually motivated in writing to
24 the National Parole Board about
25 Milgaard",



1 and I covered that with you. 5. down at the
2 bottom:

3 "It is alleged that there was collusion
4 on the part of Caldwell, Tallis and the
5 Saskatoon Police and that since there
6 was an assumption of Milgaard's guilt,
7 he was given own only a token defence."

8 How do you respond to that allegation, Mr.
9 Caldwell?

10 A Well that is, I think, even more offensive than
11 the previous ones, if that's possible, because it
12 purports to include Mr. Tallis as part of the -- a
13 collusion between him, myself, and the police
14 which is, in the -- in any sense of the word,
15 nothing resembling that happened, and specifically
16 including him in that, sir.

17 Q Okay. Now again we will hear, if we could
18 actually go to 032820, just on the conclusions,
19 and we'll certainly be hearing other evidence from
20 the RCMP, and in fact the authors of this report,
21 they concluded:

22 "There is no credible evidence to
23 support any allegation that Mr. T.D.R.
24 Caldwell, Q.C., attempted to obstruct
25 justice or was included in any criminal



1 wrongdoing in the Milgaard prosecution."

2 So I take it, sir, you would have become aware of
3 that after this report was issued?

4 A I would have, Mr. Hodson.

5 Q If we could go to 044865, and again this is
6 similar to what was referred to in the report,
7 this just relates to you and Mr. Tallis, it says
8 -- and I think this relates to the RCMP interview
9 of Mr. Tallis.

10 "During an interview with Mrs. Milgaard,
11 it was suggested that there may have
12 been collusion between Tallis and
13 Caldwell. ... The aspect of collusion
14 was briefly touched upon with Mr.
15 Justice Tallis, who stated that such a
16 statement is absurd."

17 And, again, I take it your answer to the question
18 about collusion with Mr. Tallis and the police,
19 it would be the same response to the suggestion
20 that you and Mr. Tallis may have colluded?

21 A Yes, sir. I think Mr. Tallis was included in that
22 last one that you made --

23 Q He was, and the police, and the --

24 A Yeah.

25 Q The first one was you, Mr. Tallis, and the police;



1 the second one was you and Mr. Tallis.

2 A Yes, I adopt the same answer exactly.

3 Q I just want to pick up on a couple of things,
4 here, that I should have covered before. We have
5 heard evidence about three RCMP reports that were
6 prepared back in 1969, and they are -- maybe I'll
7 just quickly call them up -- 065399. This is a
8 report dated March 20th, 1969 by Inspector
9 Riddell, and we've been through this many times,
10 it talks about their first meeting with the city
11 police. And you are familiar today, sir, with
12 this document; you know which document I'm talking
13 about?

14 A I do, sir.

15 Q Did you, back in 1969 or 1970, receive any reports
16 from the RCMP in connection with the prosecution
17 of David Milgaard?

18 A No, I did not, Mr. Hodson. If you will, I would
19 like to expand on that at this point.

20 Q Please.

21 A In the, this very Inquiry, I heard that this
22 gentleman and -- Ed Rasmussen and Stan Edmondson
23 all testifying, all ex-RCMP members -- not this
24 gentleman, who is deceased, but -- and I, fairly
25 shortly into that, pointed out to my counsel that



1 I had never seen these documents before, and that
2 was pursued.

3 One of the things is the
4 Attorney General's Department date stamp on the
5 top, which could be like a received stamp, nothing
6 like that existed in our office. And what I
7 think, Mr. Hodson, or I'm satisfied happened is
8 that those reports from those three investigators,
9 in effect, went up the RCMP line from whatever GIS
10 detachment, whatever they were in, up the line to
11 what was probably F Division headquarters, to the
12 appropriate office, and then, if you will,
13 cross-country to the newly-renamed Saskatchewan
14 Department of Justice. That's -- they, to my
15 amazement, did not come through our office in any
16 shape or form, and I was quite taken aback by
17 that. And I think, Mr. Hodson, a little later
18 there is a conclusion to that effect by one of the
19 investigators, but I would be happy to expand on
20 that if you feel it's --

21 Q Just so I'm clear, --

22 A Yeah.

23 Q -- and again as far as this report -- why don't we
24 just identify the other two reports for the
25 record.



1 A Yeah, very good.

2 Q The next one is 052961. And again, for the
3 record, this shows Attorney General's Department
4 March 28th, 1969, and I think it says
5 "Saskatchewan" underneath there, but I can't quite
6 --

7 A Yeah.

8 Q And if we can go to 052961, again the same date
9 stamp, this is the report of Mr. Riddell again of
10 May 21, 1969; and then if we can call up 250597
11 and go to the next page, this is the May 7th, '69
12 report of Corporal Rasmussen, and again it's got
13 the stamp Attorney General's Department.

14 A Yeah.

15 Q And so again, as far as the three, these three
16 reports, when would be the first time, sir, that
17 you either became aware of their existence or saw
18 them?

19 A In this Inquiry, Mr. Hodson.

20 Q And, again, I think, as far as the Attorney
21 General's Department stamp, you had made some
22 comment?

23 A Yeah.

24 Q Did you -- was this stamp used on documents
25 received by you in your office?



1 A No, it wasn't. This one clearly shows
2 "Saskatchewan", I believe the other two as well
3 were, but it simply was not our office in any way,
4 shape, or form.

5 Q And, again, I think the evidence of -- well let me
6 ask you this: Do you recall, when you got the
7 police file from Mr. Ullrich back in 1969 and the
8 witness summaries and the prosecuting documents,
9 if I can call it that, --

10 A Yeah.

11 Q -- do you recall getting anything then from the
12 RCMP by way of a report?

13 A Not, not of this description. I'm amazed that I
14 didn't, but clearly if Ullrich had them they would
15 have come to us, and they were simply new to me in
16 this Inquiry, sir.

17 Q And I believe the evidence of Mr. Ullrich, or at
18 least other police officers, is that these RCMP
19 reports likely did not, or did not, end up on the
20 city police file, and I believe that was the
21 evidence of Mr. Rasmussen as between the police
22 forces?

23 A Yes.

24 Q Can I ask you this: Do you have a recollection of
25 interviewing Rasmussen or Edmundson or Riddell



1 back at the time?

2 A I, I called Edmundson I think on a small
3 continuity issue, if I'm not mistaken. I don't
4 think Inspector Riddell was called. Corporal
5 Rasmussen I would have to check. But if I called
6 them in the prelim or trial, I interviewed them
7 shortly before, Mr. Hodson. Now I don't recall
8 it, but if -- someone may show me that they were
9 called.

10 Q Again, if we could go to, back to 065399. And,
11 again, this is the first report, March 20th, '69,
12 of Riddell. If we can go to the third page,
13 please. And as I say, we've been through these
14 reports many times, but paragraph 10 -- and,
15 again, this report outlines the RCMP account of
16 the first meeting with the city police and then
17 some follow-up discussions, and I think the
18 evidence we've heard is that this would have been
19 based on information provided by the Saskatoon
20 Police to the RCMP, and again it talks about the
21 rapes, and I think these are clearly the (V1)-,
22 (V2)----- and (V3)----- rapes and attempted rape.
23 And then it goes on to say:

24 "In view of the similar methods used in
25 committing these offences, there is a



1 good possibility that they were all
2 committed by the same individual and
3 this fact is not being overlooked during
4 this investigation."

5 A Yes.

6 Q Are you able to tell us, Mr. Caldwell, that, if
7 you would have received this report back in the
8 course of the prosecution of Mr. Milgaard, what if
9 anything you might have done with this piece of
10 information?

11 A If I had received it, and I would have read it
12 carefully, that last sentence would have -- would
13 have -- or I mean that paragraph would have
14 prompted me to inquire first of all I guess with
15 the city police investigators, "what is this all
16 about, I didn't know about this, what is there to
17 back it up or support it", and of course, you
18 know, I would take it very seriously and pursue
19 it, sir.

20 Q If we can maybe just call up one other document
21 then, I have a few more questions. 250597,
22 please. And again, this is the May 7th, '69
23 report of Corporal Rasmussen, if you could go to
24 page 250597. And this -- oh, I'm sorry, 250603.
25 And again, we've been through this report many



1 times, but if we go down at the bottom, paragraph
2 19, and this is under date of March 10, '69,
3 that's the date of the investigation so that's
4 about eight days after Mr. Milgaard first becomes
5 a suspect, it says:

6 "It is mentioned that during the late
7 fall of 1968 the local police department
8 had reports of two rapes and one
9 attempted rape."

10 And then the next page, and again I won't read
11 through this, Mr. Caldwell, we've been through it
12 many times --

13 A All right.

14 Q -- but it talks about the (V1)-, (V2)-----,
15 (V3)----- incidents and some of the physical
16 evidence and MO, etcetera. Paragraph 21 Rasmussen
17 writes:

18 "As a result of the foregoing, it is
19 felt there is a strong possibility the
20 three rapes and the murder are directly
21 connected. In view of this, extensive
22 interrogation was conducted with
23 (V2)----- with negative results."

24 and etcetera, carrying on. So you see this part
25 here, that at least at this time, according to



1 Rasmussen:

2 "... it is felt there is a strong
3 possibility the three rapes and the
4 murder are directly connected."

5 A Yes.

6 Q If you would have had this information, either in
7 this written form or some other form, but
8 suggesting this line of thinking, what if anything
9 would you have done with that, sir, in the
10 prosecution of David Milgaard?

11 A Well similar to the last question, sir, I would
12 have said -- got in one or more investigators,
13 said "okay, what's this all about, what have you
14 done about it, this would be very, very important
15 in ascertaining whether Mr. Milgaard was guilty of
16 the matters he was charged with", and one of the
17 things, sir, I think I wouldn't have done is
18 written "wrong file omit" on what I believe was
19 the (V1)-, (V2)----- lab report, if I'm not
20 mistaken.

21 Q And why is that; can you explain that?

22 A Because here they are named as being people who
23 had been involved in similar sexual offences with
24 other women, if you will.

25 Q So I think you are telling us that when you got



1 this, if you read this at the time -- let's take,
2 let's go to August of 1969, in that time frame,
3 August-September, at a time when you are calling
4 witnesses at the preliminary hearing and Mr.
5 Tallis has asked you to provide him with the
6 statements of any witnesses that may tend to
7 exculpate his client, the wording in the *Dallison*
8 case, you are familiar?

9 A Yes sir.

10 Q Yeah.

11 A Yeah.

12 Q So at that time frame, when you are reading
13 through the file with a view to addressing your
14 mind to his request to you to disclose
15 information, and I think you told us you would
16 have followed up with the police officers; is that
17 the first --

18 A That's one, yeah, I think that would be the first
19 thing, to see what this amounts to and whether
20 there's more to it.

21 Q And let's say, Mr. Caldwell, that the police
22 officers, or whoever got back to you and said the
23 following, "lookit, before Mr. Milgaard was a
24 suspect and for a short time after we did pursue
25 this as a theory, we initially thought that the



1 perpetrator of the earlier rapes and attempted
2 rape was the same person who killed Gail Miller
3 and we pursued that theory for some time, we
4 thought it was a good one, but when Mr. Milgaard
5 came along and the evidence developed to the point
6 where we had Ron Wilson and Nichol John's
7 statement we now concluded that it's a different
8 person" --

9 A Uh-huh.

10 Q -- "that committed the murder than the rapes and
11 we abandoned that theory", what, if that generally
12 was the type of information that you got back from
13 the police, what if anything would you have done
14 with that information?

15 A Well I wouldn't have changed what I just told you.
16 If that information was in my possession I would
17 have, whatever their current view was, I'd likely
18 have interviewed them first to see if that was
19 still their view, or current, I would have --

20 Q You would have interviewed who, I'm sorry?

21 A The police, first of all.

22 Q Right.

23 A And then I would have certainly contacted Mr.
24 Tallis, at or about the same time, and said
25 "lookit, this has just come to my attention", the



1 same, sir, as the last document, if you will, and
2 -- because it's very important, it could very well
3 have, among other things, resulted in the charge
4 not going ahead against Mr. Milgaard.

5 Q And what, if anything, would that have done as far
6 as your -- and if you are able to tell us -- your
7 view of the case you had against Mr. Milgaard and
8 --

9 A Well it would have opened up some very strong
10 other avenues to suggest that he had not -- wasn't
11 guilty of the matter, because these would be
12 concrete references to, you know, victims who had
13 something to say about those kind of events.

14 Q So again, if you would have received this RCMP
15 report and the previous RCMP report, do you think
16 you would have shared this information with Mr.
17 Tallis?

18 A I absolutely would, and as well as the other
19 things I just mentioned to you, there'd be no way
20 not to do that.

21 Q And would that be the case even if the police told
22 you, Mr. Caldwell, that they abandoned that
23 theory?

24 A Yeah, it would Mr. Hodson, because it would appear
25 to me that those were, you know, concrete examples



1 of things that could point to innocence on his
2 part, to say nothing of guilt on someone else's
3 part; that being Milgaard, I'm speaking of, his
4 innocence.

5 Q I just want to jump around a bit here again, and I
6 had asked you some questions last week, Mr.
7 Caldwell, about Nichol John and the Section 9(2)
8 proceeding, and I don't want to go over what we
9 covered, --

10 A Yes, sir.

11 Q -- but just a couple questions regarding you gave
12 us evidence about what she said in the witness
13 room to, I think, Albert Cadrain, Mary Marcoux and
14 Mrs. Miller?

15 A Yes.

16 Q You know the incident I'm talking about?

17 A I do.

18 Q And I'm wondering, in the course of your Section
19 9(2) application at the trial where you were
20 cross-examining her, Nichol John on her May 24th
21 statement and parts of which she could not
22 remember, did you consider asking her the
23 following types of questions: 1. Is your loss of
24 memory related to your fear of David Milgaard?

25 A I don't think I considered asking her that, sir.



1 Q And any reason, again, was there any --

2 A I -- it didn't occur to me. I'd be amazed if she
3 would agree to that, but it didn't occur to me to
4 ask, and I clearly did not ask her that, sir.

5 Q And I may have touched on this a bit earlier, but
6 I'll ask you more specifically about whether you
7 considered, in the course of cross-examining her
8 under Section 9(2), and asking her whether she had
9 made the statement in the witness room to Cadrain,
10 Marcoux, and Mrs. Miller, --

11 A Uh-huh.

12 Q -- the one we're talking about, did you consider
13 asking her that in the course of
14 cross-examination, i.e. to deal with the giving of
15 the statement?

16 A I did not think of that or consider it, Mr.
17 Hodson, or I assume I would have gone ahead and
18 did it, which I did not, I believe.

19 Q I'll now move on to -- we talked last week about
20 your interview with Peter Carlyle-Gordge, and I
21 should indicate that in the course of the
22 interview with the RCMP, Mr. Commissioner, there
23 was reference made in Mr. Caldwell's answers to I
24 think some letters and some dates. After that
25 tape I asked Ms. Knox, because I did not have any



1 documents that appeared to have been referred to
2 in the tape, and there were a couple of documents
3 provided to me this morning, and I think they had
4 been exhibits at the civil proceeding and may have
5 been in a different folder, but in any event they
6 are -- they refer to the interview with
7 Mr. Carlyle-Gordge. I have added them to the
8 database, I have provided everybody with paper
9 copies today, and they will be up. If we can just
10 go through them, 332042. I'm not sure what order
11 these go in.

12 MS. KNOX: Mr. Caldwell has the file with
13 the original documents, if you could just show
14 him which ones you are referring to, if he could
15 just take his original. He doesn't have your
16 document numbers on his.

17 BY MR. HODSON:

18 Q I see. If you want to maybe just take a look at
19 the screen and it has Mr. Carlyle-Gordge's
20 address; do you see that?

21 A Yes. I have two of stapled together, which is
22 what that is, sir, in original form.

23 Q And I take it; would this just be a note of a call
24 from him?

25 A Yeah. The smaller one is not in my writing,



1 presumably a secretary or indeed maybe Mr. Gordge
2 leaving me his address, phone number. The
3 writing, I believe this is in the -- then the
4 numbers at the bottom, Mr. Hodson, are my writing.
5 The red Saskatoon --

6 Q I'm not sure much turns -- I take it it's just a
7 note you had on your file of a call or something
8 with him?

9 A How to get in touch with him, in a nutshell, sir.

10 Q If we could call up 332045?

11 A And the same applies to the bottom half, Mr.
12 Hodson.

13 Q Okay. You'll see on the screen a letter of
14 February the 22nd, and I think it's 1983 is the
15 date. Do you have that letter in front of you?

16 A Yes, sir.

17 Q And we'll just go through parts. It looks to be
18 Mr. Carlyle-Gordge's letter to you. Call out the
19 top part.

20 "Again, thanks for your help last week.
21 I've checked my calendar and it looks as
22 if the best time for me to return to
23 Saskatoon would be Friday March
24 11--13th."

25 So can we take it from that that he would have



1 been out sometime in February of 1983 to see you?

2 A Yes. This is a proposed second visit he's talking
3 about.

4 Q It says:

5 "Doubtless you are busy Friday with
6 prosecution/office work, but I wonder if
7 it would be possible for me to spend a
8 couple of hours Friday finishing off my
9 note-making from the case files, then
10 meet with you on the Saturday to do a
11 proper interview with more of the
12 color/background."

13 Can I take it from that, Mr. Caldwell, that at
14 the initial meeting Mr. Carlyle-Gordge had the
15 case files, which you've already told us, and he
16 was making notes?

17 A That's right, sir.

18 Q And he wants to set a follow-up meeting to finish
19 that and ask you some questions:

20 "Perhaps I could use the occasion to
21 take a photograph too, unless you have a
22 b/w one available. I'll also use the
23 weekend to do short interviews with Mr.
24 Karst and others involved in 1969. I
25 want, also, to have a look at the actual



1 area of the crime."

2 And then you -- scroll down, please, he says:

3 "Your parting remark about the early
4 psychiatric profile on Milgaard (he
5 might be capable of killing ... but
6 that's a stab in the dark) struck me as
7 most intriguing and I don't think I even
8 got to the medical section, so a Xerox
9 of the relevant page would be very
10 welcome, since I want to build up some
11 kind of picture of a youth and his life
12 style prior to January 31, 1969.

13 Perhaps you could include it with the
14 other speeches etc you are forwarding."

15 Do you know what that refers to, the speeches?

16 A I believe it refers to either opening or closing
17 addresses by myself.

18 Q To the jury?

19 A Yes, sir, I think so.

20 Q And then next page, it says:

21 "I did check with the Bessborough but
22 Justice Tallis had already checked out,
23 so I shall contact him in Regina and try
24 to visit him after I've seen you.

25 Hope you got your music project



1 finished.

2 I'll call you later this week
3 to see if you'll be free March 11--13,
4 with interviews slated for Saturday the
5 12th or Sunday the 13th March. And if I
6 could spend a couple of hours with the
7 files/statements on the Friday it would
8 help. Thanks again."

9 And then just down at the bottom --

10 A That's when I mentioned, Mr. Hodson, my writing
11 sent, open and closing. Two plans would be the
12 city block and the other plan, all from the trial.

13 Q So February 25 of '83 you would have sent that to
14 him?

15 A Yes, sir.

16 Q Next, 332044 --

17 A I have that, sir.

18 Q That's his March 6, '83 letter, he confirms that
19 he will be arriving in Saskatoon Friday morning,
20 will give you a call to arrange about finishing my
21 file reading and interview time, and he says:

22 "While reading the Miller case clippings
23 in the *StarPhoenix* I came across another
24 gruesome (though legally less
25 interesting case: That of Lorne Mahar."



1 And then he goes on to talk about Mahar, and some
2 comments -- scroll down to the bottom -- about
3 some information there. So I take it you would
4 have received this from Mr. Carlyle-Gordge?

5 A I did, sir.

6 Q In fact, at the top I think we see a receipt
7 stamp, March 9th, '83, Crown prosecutors; is that
8 correct?

9 A That's right.

10 Q And then if we can go to 332049, please --

11 A I have that as well, sir.

12 Q And can you tell us, sir, what these are and when
13 you prepared them?

14 A The date, the 12th of March, '83 appears this is
15 on foolscap, it was done presumably at that very
16 day and done by me looking at possibly reporting
17 completed cases, just trying to hit, if you will,
18 the highlights or interesting features of the
19 case, sir, in an abbreviated form. If you want, I
20 can go through them if you would like.

21 Q No, I'll go through them in a moment.

22 A All right.

23 Q Were they notes that you prepared in contemplation
24 of your meeting with Mr. Carlyle-Gordge or during
25 your meeting?



1 A I would expect so by the dating compared to his
2 letters.

3 Q So, sorry, I'm trying to understand. Did you
4 prepare these to assist you in your meeting with
5 him or did you prepare them while you were talking
6 to him?

7 A No, they would be before he arrived I would have
8 done this, and the dates are of course close to
9 when he was in my office.

10 Q Right. So if we just -- and I don't propose to go
11 through all of the documents, but you talk about
12 the dates, the number of dates for trial, the
13 prelim dates, and then I think this is the Melnyk,
14 Lapchuk information. If we can go to the next --
15 and here's a note that says police to talk to.
16 Can you tell us what that refers to?

17 A Yes. I was suggesting if he wanted to interview
18 any of the investigators, those would be some of
19 the prominent or interesting ones.

20 Q Right. And then you've got Rae Murdoch, Albert
21 Cadrain, Harry Emson, so non-police individuals as
22 well?

23 A Yes.

24 Q Scroll down, please, compact in car thrown out by
25 M I presume is Milgaard?



1 A Correct.

2 Q Left Saskatoon January 31, '69. Cadrain returned
3 too March 1. Cadrain to police March 2, and then
4 two main investigators at beginning, George Reid
5 and Ray Mackie. First day off. Brady - to Short-
6 to Karst. I believe that refers to when Albert
7 Cadrain first came into the police station; is
8 that right?

9 A Yes, sir.

10 Q And then the next page, again I'm not sure what
11 the names Ullrich, Short, Perras, law, would these
12 just be notes to yourself?

13 A I think this would be other people who were, you
14 know, largely involved, me, Ullrich, Short and
15 Perras, and in there three cases of brief
16 description of who they were, what they did.

17 Q And then important transcript witnesses, Cadrain,
18 Melnyk, Lapchuk, and then you've got some page
19 numbers?

20 A Yeah. I believe Mr. Carlyle-Gordge had a trial
21 transcript and that would be, you know, references
22 to the pages he could start with or look at.

23 Q Did you give him a copy of the transcript or --

24 A I don't think so, sir. I don't think I did that.

25 Q And then it says read 95 civilian statements.



1 Letters to Cal 9-9-69. Can you tell us what that
2 note refers to, sir?

3 A Yeah. That was me simply telling him I had
4 written Mr. Tallis on that 9-9-69 date and told
5 him I read those 95 civilian statement.

6 Q And then down at the bottom it says, "A stab in
7 the dark." Do you know what that refers to?

8 A Yeah, that's that note by a social worker on the
9 psychiatric file saying I think some day he may
10 kill someone, but that would only be a stab in the
11 dark, that's what that refers to.

12 Q And do you have a recollection of reading that
13 summary?

14 A Yes, I did, in the materials I believe that
15 Dr. McDonald had.

16 Q I see. And when would you have read that then?

17 A Sometime after he got the so-called chart in from
18 those three or four other institutions, I must
19 have gone up and read it in his office I assume.

20 Q And if we can go to the next page, please, it says
21 suggest omit. Can you take us through this and
22 tell us what this refers to?

23 A I can. Now, this -- I was cautioning Mr.
24 Carlyle-Gordge. This --

25 Q Maybe read it through for the record and then go



1 back and tell us what that relates to.

2 A Suggest omit - re bathtub Calgary, young girls,
3 reported by Cadrain - witness or accused criminal
4 records - generally things in police reports that
5 didn't get into evidence - n.b. other rapes where
6 he was, in effect, a suspect. Now, the first and
7 last things refer to Mr. Milgaard. I was
8 cautioning Mr. Carlyle-Gordge that he should not,
9 you know, report, print, broadcast anything about
10 the bathtub incident in Calgary because in my
11 opinion this had never been brought home to Mr.
12 Milgaard and was not publishable in any shape or
13 form. The last N.B., other rapes where a suspect
14 referred to the things reported during the
15 prosecution, during the trial by Nichol John, by I
16 think Sharon Williams in Edmonton and by a man in
17 Regina who ended up saying if we get to him before
18 the police do they won't have any problems, those
19 were other -- it says rapes, but other sexual
20 accusations against Milgaard. I was -- the third
21 and fourth witness or accused criminal records
22 clearly he should not print in any event, and
23 generally things in police reports that didn't get
24 into evidence he should not print. That's how
25 that happened, Mr. Hodson.



1 Q Now, the last comment, N.B. other rapes where he
2 suspect --

3 A That would --

4 Q I'm sorry --

5 A Okay, go ahead. That would be the three or so I
6 just mentioned.

7 Q Would that be a reference to the (V1)-, (V2)-----,
8 (V3)----- rapes?

9 A No, this would be -- I say rapes, but this would
10 be three people, I think Nichol John may have
11 suggested that there was intercourse against her
12 will I think in Regina. There was -- I believe it
13 was Sharon Williams, the woman they visited at or
14 about Edmonton suggested that, and then the third
15 one, Mr. Hodson, was -- that comes to mind is the
16 statement by some Regina, I believe, male person
17 to the, I think, Saskatoon City Police to the
18 effect that they were interested in such and such
19 a case, if they got to Mr. Milgaard first, the
20 police wouldn't have to worry about it. That's
21 somewhere in print in the file.

22 Q Is it possible, Mr. Caldwell, that this note
23 related to a recollection or a memory that you had
24 in 1983 about other sexual assaults; namely, the
25 (V1)-, (V2)-----, (V3)----- rapes?



1 A No, it was not then, Mr. Hodson.

2 Q And how are you able to say that?

3 A The way this came up, it was all on the -- first
4 of all, it was all with respect to things
5 regarding Milgaard that I didn't think should be
6 printed, true or otherwise.

7 Q And why was that? What was your concern?

8 A Well, I think I said in the recording, I believe I
9 said that could be bloody well slanderous, which
10 it could, in effect. I think there's a follow-up
11 in what Mr. Carlyle-Gordge recorded, you can't say
12 those things about people unless they are true,
13 and that, I mean, that was my view on that, and it
14 had no connection with the, you know, what turned
15 out later to be Fisher victims, whenever that came
16 to light.

17 MR. HODSON: This might be an appropriate
18 spot to break, Mr. Commissioner.

19 COMMISSIONER MacCALLUM: Yes.

20 *(Adjourned at 2:43 p.m.)*

21 *(Reconvened at 3:06 p.m.)*

22 COMMISSIONER MacCALLUM: Mr. Hodson, now
23 that I've made off with my Halloween treat, I
24 just wanted to announce that the rules of the
25 Commission have been amended to provide that



1 nobody else may do the same unless they sing a
2 song.

3 MR. HODSON: You've heard me question; I
4 don't think you want to hear me sing.

5 BY MR. HODSON:

6 Q Mr. Caldwell, if I may, just a couple of -- I
7 think you testified under oath you did not testify
8 at the Supreme Court reference; correct?

9 A That's right, sir.

10 Q And then I have records, and I'll refer to doc IDs
11 in a moment, we don't need to bring them up yet,
12 but you were named in a civil lawsuit commenced I
13 think around March 29th, 1993 by David Milgaard,
14 discontinued in May of 1999 and we have
15 transcripts of an examination for discovery where
16 you were examined by Mr. Greg Rodin, counsel for
17 David Milgaard, on April 23, 24 and 25, 1996?

18 A Yes, sir.

19 Q And I'll be taking you through parts of those in a
20 moment.

21 A Okay.

22 Q But, sir, you were under oath at the time and do
23 you accept and acknowledge that you told the truth
24 to the best of your recollection at that time?

25 A Yes, sir.



1 Q And again for the record, the doc IDs are 149733,
2 is April 23rd, 149836 is April 24th, and 150022 is
3 April the 25th and, as I say, in a moment I'll be
4 taking you through parts of these. As well, sir,
5 I understand that you testified as a witness at
6 the Larry Fisher trial and you recall by defence
7 counsel Mr. Beresh; is that right?

8 A That's correct.

9 Q And the doc ID for that transcript is 313128 and I
10 don't propose to go through that. I think my --
11 at least my read of that transcript, Mr. Caldwell,
12 is that you were called to deal with continuity of
13 exhibit issues and things of that nature; is
14 that --

15 A I think the matters it was expected I might deal
16 with were argued in my absence and it was
17 concluded that they should not be evidence and
18 then I went into matters of lay-out of the court
19 house, where exhibits were, things like that.

20 Q And is perhaps the item that Mr. Beresh may have
21 sought to get in would be Nichol John's statements
22 in the witness room?

23 A I expect that's right, sir.

24 Q I see. And so your actual testimony at the trial
25 I think related to the exhibits and the lay-out of



1 the exhibit room; is that fair?

2 A That's what it reduced itself to and that was
3 fine.

4 Q If we could then go, I just want to go through
5 parts of the discovery transcript, if we can go up
6 to 149777, and this is just again questioning by
7 Mr. Rodin, again at 137 asks about the
8 Schellenberg incident and he says, 'and you were
9 led to believe that Milgaard was also a sexual
10 abuser of young girls, and participated in such
11 activities as having sex with virgins and young
12 girls in bathtubs so it would be easier to wash
13 away the blood.' And you answer, 'well, that's --
14 I did read this psychiatric history, first of all,
15 which Dr. McDonald had, as I explained from two or
16 three places; Winnipeg, Yorkton and Regina.'

17 And then to carry on, 'and where
18 did this information come to your attention?' and
19 you say, 'Albert Cadrain during an interview.'

20 And then again on the
21 following -- you are asked about any follow-up
22 investigation ever done, go down to the answer,
23 and you say, 'well, it wasn't from that --' or
24 sorry, the question I think to determine whether
25 Cadrain in fact was telling the truth, and your



1 answer is, 'well, it wasn't from the point of view
2 of determining whether Cadrain was telling the
3 truth. I'm quite sure I asked some policeman to
4 go and interview a man for whom there was a name
5 and an approximate address,' and then you go on to
6 talk about not having any memory, presumably they
7 did talk to somebody. And you say, 'now, it was
8 never done, from my point of view, with a view to
9 assessing Cadrain's credibility, whatsoever, that
10 wasn't my object at all.' Scroll down. 'It was
11 simply one more piece of information about this
12 particular accused.' I think that's what you told
13 us earlier today; is that fair?

14 A Yes, it is.

15 Q If we can go to 149792, you are asked a question
16 about the (V1)-, (V2)----- lab file. Do you
17 remember that document I showed you that you wrote
18 a mitt on?

19 A Yes, sir.

20 Q And Mr. Rodin asked you some questions at 200, and
21 I think you state, start off, 'but I could see no
22 connection whatever with the Miller and/or
23 Milgaard when I saw this document, and that's why
24 I wrote different file and put a big question mark
25 there.'



1 And then you are asked, 'did
2 somebody -- did you call somebody?' Answer, 'no.'
3 Question, 'Paynter, for example, and ask him
4 what's this doing here?' Answer, 'no, I didn't.
5 And once this has been discussed, in the way
6 that -- in a case like that I would have expected
7 some investigator or a lab fellow to phone up and
8 say, hey, we also sent it to you, this is why we
9 sent it to you, there's some significance and this
10 is what we think it is, do you think we should use
11 it or not? I simply didn't hear from anyone, and
12 I didn't pursue anybody to try and find out why it
13 was on the file.

14 And then if you can scroll down
15 to 205, question, 'you're saying that you would
16 have expected the onus to be on someone in the
17 police or RCMP to phone you and say this is why
18 it's here?' Answer, 'if there was anything on the
19 file that appeared to be extraneous, to belong to
20 a different thing completely, the next thing I
21 would expect to happen is someone to phone up and
22 say, hey, it's me, I put that on there because I
23 think we should consider (a), (b) or (c). That
24 didn't happen, and equally I didn't launch any
25 inquiries myself going the other way.'



1 So if we can pause there, Mr.
2 Caldwell, is it fair to say that I think you said
3 you would have expected someone from the police or
4 RCMP to tell you the significance of the lab
5 report and why it was on the Milgaard prosecution
6 file?

7 A Yes, sir, I would have.

8 Q And then I think you also say that, on the other
9 side of it, you didn't launch any inquiries going
10 the other way?

11 A That's quite right.

12 Q And you could have, you would have been in touch
13 with Paynter in the course of preparation on the
14 secretor issue?

15 A Yeah, I know I interviewed him before the prelim
16 and presumably before the trial. I would have
17 been in touch with him.

18 Q Yeah, and you could have simply asked him, hey,
19 what about this report on (V1)-, (V2)-----, do you
20 know why this might be on the Milgaard prosecution
21 file?

22 A Yeah. I don't recall, Mr. Hodson, whether it was
23 his report, but I could have done that in any
24 event.

25 Q Right. And again, that would be something that



1 would be fairly simple for you to do, is to call
2 them and ask someone why is this lab report in the
3 lab reports you gave me?

4 A Yeah, it would have been -- yes, it would have.

5 Q And again, do you have any recollection as to
6 whether or not you did that?

7 A No, I'm quite sure I didn't. If I have the right
8 document in mind, I don't think it mentioned
9 either Miller or Milgaard with respect to its
10 reference line or anything of that. I'm quite
11 sure, however, I didn't pursue it in that fashion.

12 Q Okay. Then go to the next page, or pardon me,
13 149801, and I think this is still questioning on
14 that document, you are asked, 'so in your view
15 this particular investigation, then, was
16 unconnected to the Milgaard prosecution, that is
17 the investigation that gave rise to your page 3,
18 being part of the lab reports file?' And you say,
19 'yeah, I could see no connection, good, bad or
20 indifferent, positive, negative, help anyone, hurt
21 anyone. It just appeared to me is if it was a
22 wrong document from another file that strayed onto
23 this one, which wouldn't amaze me in the view of
24 the, you know, the bulk of the material,' and then
25 question, 'put in by mistake?' Answer, 'that



1 would be my assumption.'

2 And again, is that what you
3 would have thought at the time, sir?

4 A Yes, that's right.

5 Q And in fact then Mr. Rodin goes on, 'but you would
6 agree with me that the type of analysis that was
7 done was the same type of analysis vis-a-vis blood
8 grouping that is the subject of other reports, and
9 in fact you're looking for a blood type; so it's
10 certainly not out of left field in terms of the
11 analysis that's being conducted,' and your answer,
12 'the way I'd answer that, Mr. Rodin, is that once
13 I read the (V2)----- and (V1)- alleged rape,
14 Saskatoon, I'd be surprised if I read the rest of
15 the document at all, because my reaction to that
16 is, hey, this is not -- this is on here and it
17 shouldn't be; it's an orphan. First of all,
18 there's a big question mark I wrote there beside
19 the word omit. Wrote omit, drew a line through
20 it, and probably the very first thing I did, I
21 think, was write different file on it. So my
22 assumption is that I didn't pass it onto anybody,
23 but I stand corrected if I did. And I clearly did
24 not go back to the police or the lab and say
25 what's this all about.'



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1 A Yes, it is, sir, and that, those places to my
2 recollection now were the Regina court house where
3 the prosecution file was and Inspector Quinn's
4 office here where the same document appeared, he
5 showed it to me.

6 Q If we could go to 149815, please, and again Mr.
7 Rodin is asking you questions here about the
8 police report, Larry Fisher and 334 Avenue O South
9 and he goes through that, and if you can go to
10 page 149819 and he asks you the question at 284,
11 'well what about the address 334 Avenue O South,
12 did that stick out to you?' Answer, 'no, it
13 didn't, and that's -- that is interesting because
14 that's the Cadrain house. I didn't say, hey,
15 that's Cadrain's house. Clearly it was.'

16 And again, is that accurate and
17 truthful?

18 A That's right, sir.

19 Q Page 149849, Mr. Rodin asks you the question at
20 360, and he's referring to Larry Fisher's
21 statements to Detective Karst in Winnipeg in 1970,
22 'have you seen this statement before?' You say,
23 'no, I'm confident I haven't seen that one.' And
24 then, 'were you aware that Mr. Fisher made a
25 statement in Winnipeg to Winnipeg police,



1 concerning some Saskatoon offences?' Answer, 'I
2 learned that, yeah, by, I guess, the whole process
3 of the publicity attending to this matter.'
4 Question, 'and you weren't aware of that at any
5 time prior to the emergence of the Justice
6 investigation, Department of Justice
7 investigation?' Answer, 'no I -- the only -- the
8 only way I learned about that was in the Justice
9 investigations, somebody or other went into the
10 business of the phone call I think I got from
11 my -- Ken MacKay of Regina,' and then it goes on
12 through that file.

13 A Okay.

14 Q Or it goes on that discussion about the '71
15 letter. So again, is that accurate, Mr. Caldwell?

16 A Yes, it is, sir.

17 Q Page 149854, you were asked, 'when did the fact of
18 the Fisher confessions to two of the four, I'll
19 call them Saskatoon offences, as described in the
20 Statement of Claim in this action, first come to
21 light in your --' and then question, 'when did it
22 first --' yes, 'first come to light to you?'
23 Answer, 'to me?' 'Yes.' Answer, 'well, it, in
24 any meaningful terms, it would be as part of the
25 Eugene Williams and/or RCMP investigation, and I



1 say that because the phone call to me by MacKay,
2 my phone call to Corey were simply requests to
3 transmit things, and I had no -- first of all, I
4 didn't in any way associate Fisher to Fisher at
5 the time of those phone calls with the Gail Miller
6 murder or David Milgaard, first of all, so that
7 didn't -- the name Fisher didn't register or mean
8 a thing to me about this on any meaningful sense
9 it would be recently; in other words at the time
10 when Mr. Williams commenced his inquiries and/or
11 the RCMP, the project Flicker matter of the last
12 couple of years or so.'

13 And then the next page you say,
14 'the name wouldn't stay with me any longer than it
15 needed for me to phone Corey and throw away the
16 phone memo, because the name Larry Fisher -- like
17 I, of course, like any of us, have seen hundreds
18 of names in the course of a month of prosecuting
19 or defending, whatever, didn't mean anything to me
20 when the episode occurred. Whatever, I mean it
21 could have been Bill Smith, it wouldn't have
22 registered either. So I undoubtedly saw and used
23 the names Larry Fisher or the message wouldn't
24 have made sense, but it didn't stay with me in any
25 sense, and of course didn't refer back, again, to



1 the time of the murder.'

2 Again, is that an accurate and
3 truthful statement, sir?

4 A That's right, sir.

5 Q Go to 149859, please, and then again Mr. Rodin is
6 asking about the fact that the informations are
7 sworn December 30th, 1970 for Mr. Fisher and says,
8 'now, when an information is sworn, isn't it true
9 that a prosecution file then gets opened?'
10 Answer, 'no. The city police would, in a given I
11 suppose week or month, would swear, you know, vast
12 numbers of informations. Some of those would
13 never -- most of them would go to court for
14 openers. I guess there was the odd one that was
15 never presented for some reason. Some, the
16 accused wouldn't show up and they would go into a
17 bench warrant situation. Others he would, and
18 some of them would be dealt with at the city
19 prosecutor level, and examples being when someone
20 wanted to plead guilty and it was expeditious to
21 do it that way. Now, we would never open up a --
22 if you're talking about a prosecution file, we
23 would never open a prosecution file in the Crown
24 prosecutors office of that day unless the city
25 police or RCMP or some other force sent us, in



1 effect, a file and said we want you to prosecute
2 this. So the fact that the city police are
3 swearing informations does not, in my -- you know,
4 according to me, in no way equates with opening a
5 prosecution file. They would have thousands of
6 charges that never even came to our attention in a
7 given two or three years.'

8 And is that an accurate answer?

9 A Yes, it is, sir.

10 Q And then at page 149862, and at 401 Mr. Rodin is
11 asking you -- and this relates to the March 17th,
12 1971 letter that Deputy Chief Corey sent to Ken
13 McKay that refers to your request to send
14 information about Larry Fisher -- and you were
15 asked, 'So I'm suggesting to you that the document
16 indicates that you were at least aware of the
17 nature of the charges against Larry Fisher?'
18 Answer, 'It appears that I probably used the
19 terminology "relating to offences of rape
20 allegedly committed by Fisher", when I phoned
21 Corey, that appears to be so. When I phoned Corey
22 was the day before he wrote the letter, you'll
23 notice.'

24 And is that accurate and
25 truthful?



1 A Yes, it is.

2 Q So at least on March 17th, and I think we covered
3 this the other day, March 17th, '71 you were aware
4 of Larry Fisher and the nature of the charges
5 against him?

6 A Well only, sir, in the sense of I was aware of
7 that name because of the phone call, and in this
8 instance Mr. MacKay did add words to the effect of
9 "sexual offences" or "offences of rape", which
10 clearly I passed on to Corey by the way his letter
11 read, I think, Mr. Hodson.

12 Q If we could go to 149870, and you were asked,
13 'Okay, you were never informed at the time of the
14 guilty pleas?' Answer, 'No, I don't think --
15 there was no reason I would be. I have no memory
16 of that ever happening because my office was
17 simply a conduit of a request, and there was no
18 reason for us to know what happened to that set of
19 charges. Because for one thing, we did not have
20 open files on that individual in my office. If
21 that had been the case, somewhere along the line I
22 suppose someone would have said, "whatever
23 happened to Fisher on those charges?" They didn't
24 exist in our office and I, in a nutshell, I'm sure
25 I never did learn the outcome of those because I



1 had no reason to be interested in them.'

2 Is that accurate and truthful?

3 A That's right, sir.

4 Q Now I want to take you through a line of
5 questioning here regarding some questions in the
6 Peter Carlyle-Gordge interview. And if we could
7 go to 149962, please, and I'll just go through.
8 And they are referring to some police reports,
9 it's a document which is 237, which is I think a
10 unique number in the -- in someone's disclosure.
11 But if we could go over to the next page, they
12 identify the report as being B148 and B149, and
13 those are the reference numbers of police reports.
14 And so if we can call up the first document, and I
15 think that's 237, but if we can call up 025155,
16 and I think I showed you this earlier, it's an
17 April 7th, 1969 report of Detective Sergeant
18 Mackie, and you will see B148 and then the next
19 page, please, B149. So that's the first report
20 that Mr. Rodin questions you about.

21 A Okay.

22 Q And if we could just call up, this is an April 7th
23 report of Mackie, if we could call up 009251,
24 which is just a different version of this
25 document. And, Mr. Commissioner, the B numbers we



1 think were put on in 1990, so those were the
2 documents used I think in the discovery. This is
3 the same April 7th report, and this one, we'll see
4 that's your handwriting on the top right?

5 A Yes it is.

6 Q And so I think this document, being the one that
7 Mr. Rodin refers you to, is a document that was on
8 your prosecution file?

9 A It must have been, sir.

10 Q And the relevant parts for the questioning are a
11 reference there on March 31 to:

12 "Carl ... Crook was interviewed with
13 regards to ..."

14 the:

15 "... murder ...",

16 and then:

17 "When interviewed in regard to his
18 associations and knowledge of (V2)-----
19 and (V1)-, rape occurrences", ...

20 and then goes on to talk about taking a blood
21 test. And then just a bit further down you will
22 see, just a bit further in this same report,
23 there is a reference to:

24 "On April 1 inquiries ...",

25 being:



1 "... made again through the RCMP to
2 Regina about David Milgaard, but I was
3 advised that Milgaard had not been
4 located in Regina ..."

5 And then I think if, actually, we go to the next
6 page there is also reference -- and again, I
7 believe I went through this with you earlier --
8 to (V2)----- being taken to the Red Cross,
9 brought to the police station where she was
10 interviewed, and a description given of the
11 suspect there. And so I think that's the
12 reference in that report to (V1)-, (V2)----- and,
13 as well, to Mr. Milgaard.

14 So if we can go back to 149963,
15 and just go through this, the question you are
16 asked:

17 "I think the significance of it is that
18 David Milgaard is mentioned?

19 A On the first page, yeah.

20 Q On the first page. So we're dealing
21 with a Milgaard, post-Milgaard report in
22 any event?

23 A Post -- you mean once his existence
24 had been determined, is that what you
25 mean?



1 Q Yes?"

2 And then to the next page, and you say:

3 "But I honestly, unless you can assist
4 me a little more, I can't recall that I
5 saw this report. I wouldn't deny that I
6 did.

7 Q Okay. You'll note that with respect to
8 the (V2)----- and (V1)- rape occurrence,
9 an individual named Crook was spoken to;
10 that's the third paragraph on the first
11 page, and we've already noted that
12 Milgaard, his name pops up the fourth
13 paragraph on the bottom --

14 A M'hm.

15 Q -- of the first page. On the second
16 page, (V2) (V2)- (V2)----- was taken to
17 the Red Cross where her blood was
18 grouped and found to be "AB" group."

19 And then down to the bottom where (V2)----- was
20 shown a number of photographs, and then I think
21 your answer there is you don't recall seeing
22 that.

23 If we could then go to 149966,
24 and this is a reference to document 238 with
25 (V1)--- (V1)-, and then if you can go to the next



1 page you'll see a reference to that being B150
2 and 151. And so again, if I could call up
3 011833, and this is a report, you will see at the
4 top B150 and the next page B151, if we can go
5 back to the first page. And this is a reference
6 to (V1)--- (V1)-, and I'm not sure if I've gone
7 through this one with you. The records that we
8 have, Mr. Caldwell, and based upon your evidence
9 of what you say was in your prosecution file,
10 namely the police reports identified in Ullrich's
11 witness summary --

12 A Yes.

13 Q -- do not include this document?

14 A Okay, sir. That's --

15 Q They just -- let me just finish, please.

16 A Yeah.

17 Q Based upon the prosecution file that we received,
18 and if the only police reports on your prosecution
19 file were those identified by page number in the
20 Ullrich summary, this document does not form part
21 of it?

22 A I'm sorry.

23 Q Okay. Do you understand that?

24 A Yes, sir.

25 Q Just so that that's the status of the documents.



1 A Very good.

2 Q And this is a document, again, that talks about
3 checking out (V1)- and then showing photographs to
4 (V1)-, Ms. (V1)-, from David Milgaard. Do you
5 have any recollection of this document, of having
6 this?

7 A No, I don't, Mr. Hodson.

8 Q And again, I think we've been through this
9 document, there is a fair bit of information in
10 here regarding -- this is a Gail Miller murder
11 investigation document, if we can go to the top
12 it's 641 and again talks about both Ms. (V1)- and,
13 as well, Mr. Milgaard.

14 So then if we can go back to the
15 discovery transcripts, go to page 149967, and I
16 think there is a reference here again to 150, 151,
17 and you are asked the question "perhaps" -- then
18 Mr. Rodin says:

19 "Thank you for pointing that out.

20 Actually it refers to Dave Milgaard, but
21 I don't think there's anything that's
22 particularly relevant for our purposes,
23 but in any event it's not complete."

24 And then you are asked to read over it and you
25 are asked here:



1 "Well, do you recall reading that
2 document?

3 A No, I do not."

4 And then again, if we can skip ahead to page
5 149971, and then there's some questioning and
6 then Mr. Halyk, who is your counsel at the time,
7 says:

8 "I think the point is that you and I and
9 anyone else who reads the report can
10 form their own opinions, because it
11 wasn't something that he had at the
12 time."

13 And I think that was -- and again, I don't want
14 to read through all the questions but it speaks
15 for itself, so that's the reference there. Then
16 I want to go ahead to 149974. Are you able to
17 tell us Mr. Caldwell, today, whether or not you
18 had that police report document on your file?

19 A I -- it looks as if it -- at that time, from what
20 you have said today, sir, I understood I did not
21 have it on my file. Was that -- am I --

22 Q And I'm telling you what, the evidence we've heard
23 about what's in the file.

24 A Okay.

25 Q My question is, put aside for the moment what I



1 said, --

2 A Okay.

3 Q -- are you able to tell us one way or the other
4 whether or not that police report, B150, 151, was
5 or was not on your prosecution file?

6 A I can only assume it wasn't, sir, but I can't tell
7 you that, you know, from -- except based on what's
8 -- you've told me a moment ago.

9 Q Okay. And then, again, to the question here:

10 "All right, so I have your answer on
11 that. So what was the (V1)- reference
12 doing in the Miller prosecution file, or
13 in the Miller investigation file,
14 possibly prosecution file.

15 A Well, I was not in the Miller
16 investigation file, at any point
17 whatsoever.

18 Q So is this another missed file --
19 misfiled police report?

20 A No, no, what I -- it goes back to what
21 we talked about earlier this morning,
22 that I physically never had presented
23 to me, and never went through the
24 Police Department's file re the Gail
25 Miller murder, and that's true now and



1 always was. So I don't know what was
2 on there, or what went off there, or
3 anything else about it. I had the
4 David Milgaard prosecution file, and I
5 am trying my best to tell you what I
6 did or didn't see at that time, on
7 that file, I'm happy to answer. I
8 never did get into the Gail Miller
9 murder file."

10 And is that accurate?

11 A Yes, sir.

12 Q And then down at the bottom, just for reference,
13 Mr. Rodin then gets into the transcript of the
14 Caldwell/Peter Carlyle-Gordge on tape, --

15 A Okay.

16 Q -- and that was the very first and I'll show it to
17 you in a moment, I think, 11-page transcript. If
18 we could go to the next page and there's just a
19 reference to that at the top, it's identified.
20 And then if you could go to 149978, and then you
21 are asked the question about -- this is the tape,
22 maybe we could just call it up 167995. I think is
23 the doc. ID. Do you recall this? We went through
24 the transcript of Caldwell/Peter Carlyle on
25 tape, --



1 A Yes.

2 Q -- remember this document, and then we looked at a
3 typed version?

4 A Yes.

5 Q So can we just go back to the transcript, page
6 149978, and you are asked a question about this
7 document:

8 "Do you recall whether that was in the
9 middle of an interview? It sounded like
10 it sort of got --

11 A Yeah, it certainly, it certainly isn't
12 at the start of one because it's a
13 fragment of some longer discussion
14 obviously."

15 And, again, I think that's similar to what you
16 told us last week?

17 A I think so, sir.

18 Q And then 149979, and you'll see at the bottom
19 there is a reference about -- Mr. Rodin asks you
20 about whether you gave permission to record, and
21 you said you did, and then on the next page you
22 say:

23 "-- I would do better on that if we had
24 all of what he recorded from me, and we
25 evidently don't have that. This is just



1 one page. That's all you have, I take
2 it?"

3 And then it goes on to say:

4 " -- nineteen pages",
5 and that's the same as the document that we have.

6 A All right.

7 Q So now if we could go down, maybe we'll just --
8 could we put 167995 on a split screen, just the
9 first page. And then Mr. Rodin asks you a
10 question, he says:

11 "Well, okay. You're talking about the
12 things that never got into the trial, is
13 that correct, at the beginning of the
14 tape, and certainly at the beginning of
15 the transcript?"

16 If you could just bring that box down, please, to
17 the bottom, and if you could call out this first
18 part here, I think that's what's being quoted,
19 'Yeah, I certainly didn't read that in the
20 trial.' Or sorry, right here, 'Cadrain reported
21 some bad goings-on in Calgary, you know, that
22 never got into the trial and I think our/there's
23 an awful of stuff like that that's --'. So,
24 again, I think that's the reference, and that's
25 attributed to you, that Mr. Rodin is asking you



1 about here. And then if we could go to the next
2 page of the transcript, and leave the handwritten
3 document up please, and then you say:

4 "Well, it says, "I certainly didn't read
5 that in the trial, ..."

6 which is there:

7 "... and that appears to be speaking
8 about the -- about Cadrain reporting
9 some bad goings-on in Calgary. I think
10 that's the famous bathtub episode, I
11 would say at a glance there."

12 And then scroll down on the transcript, to
13 question 118, and you say:

14 "Q Something ...",

15 or he says, Mr. Rodin:

16 "Q Something about a criminal record. In
17 any event, you then say something to the
18 effect, "Yeah, I think to some extent
19 things are in police reports that did
20 not get in evidence. I think it's great
21 if", and then there was a "boom, boom,
22 boom, the investigation was done this
23 way, boom, boom, boom, so on. And then
24 there's at least one place in there
25 where they're talking about other rapes.



1 There was a suspect, and that" -- or,
2 "He was a suspect and that was never
3 brought home to him."

4 Now that is Mr. Rodin's question. If you can
5 scroll down on the right-hand side, please, the
6 documents -- further, please -- and I think
7 that's the comment that Mr. Rodin refers to
8 there, 'I think to some extent things are in
9 police reports that didn't get into evidence, now
10 I think ...', etcetera. So I think that's the
11 comment that Mr. Rodin is referring that you said
12 to Peter Carlyle-Gordge; are you following there?

13 A Pretty well, sir.

14 Q And then 819, if you can scroll down:

15 "And I think" ...",

16 which is a quote there:

17 "... and basically that's your comment
18 there. You were talking about the
19 police reports in that paragraph, you
20 were talking about him being a suspect
21 in other rapes. I just showed you
22 two -- one police report at least, or
23 the two last police reports, document
24 237 and 238 --",

25 and let me pause there, Mr. Caldwell.



1 A Uh-huh.

2 Q Those were the two I just showed you that talk
3 about (V1)- and (V2)-----.

4 A All right.

5 Q And then the next page, if we can go to the top at
6 820, and Mr. Rodin asks -- so he's referring to
7 those two police reports relating to (V1)- and
8 (V2)-----:

9 "... which dealt with David Milgaard
10 being a suspect in rapes, I believe,
11 based on, I think, the investigations
12 that were mentioned, in terms of the
13 blood test and the photographs, blood
14 test in 237 and photograph in 238."

15 And then Mr. Halyk says:

16 "And then you showed him earlier the
17 one, the sort of scripted document where
18 there was a reference to the rape."

19 And I think that's the five-page script document,
20 the very first entry refers to (V1)-.

21 A All right.

22 Q And so Mr. Rodin asks:

23 "Yeah. So I'm suggesting to you that
24 that would certainly indicate that you
25 had seen police reports which linked



1 David Milgaard to the rapes, to the
2 Larry Fisher rapes, that we now know to
3 be Larry Fisher rapes?

4 A Well, I would -- I can't give you a
5 crisp yes or no to that. This is why,
6 like, I would think I would do better
7 on this if I had more of the
8 surrounding. I don't know if, for
9 instance, Carlyle-Gordge brought me
10 things, Mr. Rodin, for instance."

11 And then, if we can skip ahead, this is brought
12 up again. If we can go to page 150056, and again
13 the questioning -- I'm sorry, 150056, it's page
14 312 at the top. So there's 1-0 -- 150056, and
15 then again that this document on the right-hand
16 side is marked as an exhibit, and then Mr. Rodin
17 carries on:

18 "Okay, dealing with page one of the
19 transcript ... I direct your attention
20 to the first page."

21 And then:

22 "Q And just where you say, "Yeah, I think
23 to some extent things are in police
24 reports that didn't get in, probably
25 into evidence. Now, I think it's great



1 if you -- the investigation was done
2 this way, boom, boom, boom ...",
3 and then down to 1101:

4 "And then there's at least one place in
5 there where they're talking about other
6 rapes where he was a suspect, and that
7 was never brought home to him, and I
8 think --"

9 Okay, and that's your quote from the
10 Carlyle-Gordge interview, and then:

11 "It appears you say, "Could be bloody
12 well, you know, slanderous." I take it
13 the other rapes you're referring to are
14 the series of Saskatoon offences which
15 Larry Fisher ultimately pled guilty to?"

16 And your answer:

17 "Well, I -- at this point, I can't say
18 that that crisply, if you will, but
19 obviously at that time I thought he was
20 a suspect in other rapes. Obviously
21 they were not, you know, brought home or
22 attributed to him, so I couldn't -- that
23 makes sense to me, but I can't narrow it
24 necessarily to that."

25 And then 1102:



1 "Q And the only other rapes that you'd ave
2 had occasion to learn about, according
3 to your evidence, I believe, are those
4 that you read about in the police
5 reports or may have read about in the
6 police reports?

7 A Generally speaking, yeah, I'm sure
8 that's right.

9 Q Because you didn't see any press reports
10 of any rapes?

11 A Well, I have no memory of seeing them,
12 I -- in that period. I mean, I may
13 well have, but who knows.

14 Q Okay.

15 A Yeah, that's one of the cautions,
16 Mr. Rodin, that I was, I guess,
17 talking about. I'll still find the
18 rest of it somewhere, I think.

19 Q What are you referring to?

20 A The business of telling Carlyle-Gordge
21 of things that I didn't think he --",
22 then:

23 "Q It's not necessary ...",

24 "The transcript will speak for itself."

25 And then just scrolling down to 11, question



1 1111, and then the question is:

2 "Q Suggest that you were aware of the other
3 rapes at the time of your prosecution of
4 Mr. Milgaard?

5 A Well, of some other rapes, I was aware
6 of some allegations of rapes. And the
7 way I read this, it seems to -- it
8 strictly deals with Milgaard, and I
9 know that none of that ever -- well,
10 ever came home to him. I'm not
11 suggesting it should have, but didn't
12 do that. And of course just -- I
13 think I tried to -- well, in any event
14 you couldn't essentially call evidence
15 of those rapes to prove this murder if
16 they did exist, unless you had some
17 very, very narrow heading of similar
18 act or something. It didn't happen
19 ..."

20 "Q I'm suggesting to you that what you knew
21 was based upon police reports which we
22 went over perhaps at painful length
23 yesterday --

24 A Yes.

25 Q -- indicating that the police



1 interviewed (V2)-----, (V1)- --

2 A M'hm, yeah.

3 Q -- took blood tests, did other
4 investigations?

5 A Yeah, I would think that my general
6 knowledge of that came from police
7 reports.

8 Q And you would agree then that the name
9 (V2)-----, (V1)-, (V9)---- and (V4)---
10 then were the other victims anyway
11 mentioned in the police report from time
12 to time?

13 A I think that's right. In other words,
14 what we went through yesterday, all of
15 those names showed up on the David
16 Milgaard prosecution file, as I
17 understand it, and the police reports
18 dealing certainly with some of them.
19 I think maybe in one case it was
20 simply a witness statement, was it
21 not, (V9)----?

22 Q Yes. Although there may have been other
23 -- I'm not saying there weren't other
24 references, but there was a witness
25 statement in there.



1 A Yes. That's the only one I saw, but
2 -- sorry."

3 And then if you could go to 150084, where this is
4 picked up again, and again Mr. Rodin says at
5 question 1195:

6 "Q Okay, I'm suggesting to you, Mr.
7 Caldwell, that your comment to
8 Carlyle-Gordge suggests you knew (a)
9 about other rapes at the time of your
10 prosecution of David Milgaard, would you
11 agree?

12 A Yeah.

13 Q And (b) that David Milgaard is suspect
14 to some degree in connection with those
15 other rapes; at least some inquiries
16 were made in that regard?

17 A Yeah, now, I didn't know any more than
18 I did at the time of the trial, in
19 '83. In other words nothing had
20 happened in the interim, so, yes.

21 Q And that the police reports contained at
22 least one reference to other rapes that
23 you remembered, or found at the time of
24 your interview with Peter
25 Carlyle-Gordge?



1 A But allegedly directed toward Milgaard
2 as I see it now."

3 And then next page. At 1201:

4 "Even if you reviewed all the documents
5 that relate to the other rapes, it would
6 be fair to say that you couldn't recall
7 specifically which one?

8 A No, I couldn't, no. I am satisfied
9 that we have everything, when I say
10 "we" that everything still exists
11 though that I had in '83, if you
12 follow me. In other words, everything
13 that I had on file then, in the closed
14 file, has made its way into police
15 hands and to counsel."

16 So I have read you lengthy parts of that exchange
17 of questions and answers --

18 A Uh-huh.

19 Q -- on three different occasions about this issue,
20 Mr. Caldwell, and I think in Mr. Rodin's questions
21 to you and your answers, the question as to
22 what -- and your conversation with
23 Mr. Carlyle-Gordge in 1983 -- maybe we can go back
24 to, if we can go back to just the transcript on
25 the full screen please, the handwritten notes on



1 the full screen. And I think it's certainly
2 Mr. Rodin's contention, in his questioning of you,
3 that to some extent things that are in police
4 reports that didn't get into evidence now, and
5 talking about other rapes where he was a suspect
6 and that was never brought home to him, and I
7 think the suggestion was made in the -- your
8 examination, Mr. Caldwell, that when you talked to
9 Peter Carlyle-Gordge you were talking about Mr.
10 Milgaard being a suspect in the (V1)- and
11 (V2)----- rapes and that not being brought home to
12 him?

13 A Well, sir, that -- as far as I'm concerned what I
14 am quoted talking about here was the (a) Calgary
15 (b) bathtub episode. It was -- it was something
16 that Mr. Milgaard was suggested as being the
17 perpetrator of, and that was clearly -- had never
18 been proven, never gotten into evidence. I was
19 trying to, you know, impress on Mr. Carlyle-Gordge
20 that he must not print things like that, or
21 criminal records, and one or two other things.
22 That's what that refers to, Mr. Hodson, in my
23 memory.

24 Q And, again, I think Mr. Rodin took you through the
25 fact that on your prosecution file at least one



1 police report I think you have acknowledged you
2 would have had, being 009251, and maybe we could
3 call that up.

4 A Okay.

5 Q And that's the April 7th report. And again, and I
6 think you acknowledged both to Mr. Rodin and to me
7 earlier in these proceedings that you would have
8 read this report back at the time of the
9 prosecution?

10 A I assume that's right, sir.

11 Q And so you would have been aware of, at that time
12 you would have read this paragraph about Carl
13 Crook and the (V2)----- and (V1)- matters?

14 A Yes, I must have, my -- my handwriting is on the
15 top, and it's a police report I would have
16 received, evidently.

17 Q And again if, in the course of your preparation
18 for the trial, if the police had suspicions about
19 Mr. Milgaard for other rapes, tell us how that
20 would affect your preparation of the case?

21 A Well, generally speaking, you are limited to
22 calling evidence about one offence that's --
23 relates strictly to that offence. You may have a
24 lot, you may have some maybe circumstantial or
25 whatever, in a broad way you cannot -- you can't



1 use, let's say, evidence they thought they had
2 against Milgaard in proving that offence unless
3 it's evidence right on that very offence, is how
4 I'd put it, sir. So I don't know how -- I mean if
5 they are saying to me "we have other evidence that
6 appears to point to Milgaard", I take it in other
7 offences, in other rapes; is that what you are
8 saying?

9 Q In your discussions with Peter Carlyle-Gordge what
10 was your concern about not having information made
11 public by him?

12 A My concern was that that Calgary bathtub episode
13 related, and always did, to David Milgaard,
14 according to the information we had. I had the
15 police try to pursue it and they did the -- I
16 included in the statement about not printing
17 people's criminal records and that if they, if
18 Carlyle-Gordge had printed that, to wit said "this
19 was David Milgaard's handiwork", in my view it
20 would be, at the very least, libelous or
21 slanderous. Because that whole thing, in my mind,
22 then related to him and it was -- it was nothing
23 concrete the way it ended up.

24 Q Go to 150082, please, of the transcript. And at
25 the top, 1190 you were asked -- just go to the



1 previous page, please, you were asked the question
2 about -- and I recall we went through last week
3 where Eugene Williams asked you to go through the
4 prosecution file and identify I think it was
5 attacks on nurses where a knife was involved. Do
6 you remember we went through that?

7 A Yes, I do.

8 Q And I think you identified for Eugene Williams the
9 (V9)----, (V9) (V9)----, (v)---- and I think there
10 was a few other statements, (V4)---, that you sent
11 onto him based on your review of the file?

12 A I think that's right, sir.

13 Q And this is where you describe for Mr. Rodin that
14 you went through it, and then Mr. Rodin says:

15 "Q Well, weren't you specifically asked to
16 provide information about other rapes;
17 wasn't that the whole point?

18 A I was asked -- no, I was asked to look
19 for the name Larry Fisher."

20 And then:

21 "Q Did you not provide Mr. Williams with
22 certain documents indicating other
23 rapes --

24 A Yeah.

25 Q -- that were located in the file at the



1 time you communicated with him?"

2 And I think in fairness, it may not have been
3 other rapes, but it may have been other assaults.

4 A All right.

5 Q Sexual assaults. And you say:

6 "A I think he asked me, one of the requests
7 was to do with other sexual offences
8 involving a knife, that was one of the
9 requests he made. I can't remember
10 whether I found anything or sent it. If
11 I found anything, I certainly sent it."

12 Then Mr. Rodin says:

13 "Q I suggest to you, though, Mr. Caldwell,
14 that there could be no reason why your
15 review of the file in preparation for
16 your interview with Mr. Carlyle-Gordge
17 should reveal less information about the
18 other rapes, or more information about
19 the other rapes than a later review of
20 the file at the request of Eugene
21 Williams --"

22 And then he says:

23 "Q -- that is, you should have come up with
24 the same information and be able to
25 conclude, as you did with Peter



1 Carlyle-Gordge, that there was
2 information about Milgaard being a
3 suspect in other rapes?"

4 You say:

5 "A Okay, the difference is this, Mr.
6 Carlyle-Gordge was there as an author of
7 a book on Western Canadian murders that
8 never got written. I took him at face
9 value as being that. I looked through,
10 made this four-page item that we looked
11 at earlier today that sort of highlights
12 the things I thought were exceptionally
13 interesting. I, by no means, read the
14 file over at that time because I was
15 obviously involved in other activities.
16 The date of that note, just let me see,
17 was in the 12th of March, 1983, and I
18 extracted what I've sort of referred to
19 here as highlights or interesting
20 things. I sat him down and let him go
21 through the file to his heart's content.
22 And the way this looks now, I'm sure he
23 was in Saskatoon twice and did all of
24 the above, answered any questions he
25 might have. But I certainly -- you



1 know, his thing wasn't the police
2 investigation arising out of accusations
3 of conspiracy by the Minister of Justice
4 and Director of Prosecutions and Deputy
5 Attorney General; in other words, it was
6 a much less formal exercise."

7 Is that accurate and truthful?

8 A Yeah. What I did, Mr. Hodson, I clearly didn't
9 review the file carefully to make that up roughly
10 four or five page set of interesting highlights, I
11 think those would have very likely come out of the
12 report on completed cases, I clearly didn't and
13 couldn't read the file completely for that, but
14 that kind of information was quite, you know,
15 quite obvious on the file.

16 Q And that's just, for the record, is that 332049,
17 the doc ID, that's the four page note that we went
18 through?

19 A That would be it, sir, that's right.

20 Q And again just back, though, to Mr. Rodin's
21 question, I think he -- let me put the same
22 question to you. In 1990, or 1989, Eugene
23 Williams asks you to go through your prosecution
24 file because he's had some information from Mr.
25 Wolch that there's information on there about



1 other attacks in and around the time of the murder
2 and you sent Mr. Williams a list of statements and
3 referred to the February 4th police report of Mr.
4 Mackie that I think referred to (V2)-----, and I
5 think Mr. Rodin's point is this, well, would you
6 not and could you not have done the same thing
7 back in 1969 when you reviewed the file?

8 A For?

9 Q Mr. Tallis.

10 A I much more likely did it in 1969 for Mr. Tallis.
11 That would have been --

12 Q Let me just -- let me rephrase it.

13 A Okay.

14 Q When you reviewed it in 1969 in response to
15 Mr. Tallis' request for -- and disclosure wasn't
16 the word --

17 A Yeah.

18 Q -- where he asked you to go through witness
19 statements, you recall that?

20 A Yes, sir.

21 Q And so I think Mr. Rodin's point in the
22 examination, and I'll ask you the same question,
23 is the exercise you went through in 1989 for
24 Mr. Williams identified a number of witness
25 statements that related to assaults in and around



1 the time of the murder; correct?

2 A Right.

3 Q And was there any reason that, (a), you didn't do
4 that same review in 1969 when you were reviewing
5 the file to determine, (a), what your case was,
6 and (b), what you might need to give to Mr. Tallis
7 in response to his request?

8 A Well, one of the possible differences is that I
9 think Mr. Tallis asked me to review witness
10 statements which I did as you recall, that's one
11 of the things I did in 1969, and I'm not sure,
12 sir, where we go from there, what did you --

13 Q Well, I'm just wondering, again, when you reviewed
14 the file in 1989 you generated information that
15 indicated that in and around the time of the
16 murder there were a number of witness statements
17 about attacks, sexual attacks or attacks by men on
18 women in and around the time of the murder.

19 A Okay.

20 Q And whether that -- whether you have any
21 explanation as to whether you did that in 1969
22 and, if not, why not.

23 A At the moment I don't know whether I did it in
24 1969, sir, based on just that amount of
25 information.



1 Q And again would there be a reason why you would
2 not have reviewed your file for that purpose?

3 A Well, what was the -- what was the request made of
4 me at that time, or was there one?

5 Q The general request of Mr. Tallis --

6 A Yeah.

7 Q -- maybe you've already answered it, was to review
8 the file, the *Dallison* case about what information
9 or statements you had to provide to the defence.

10 A All right, and I think most of that, as I recall,
11 related to witness statements, Mr. Hodson, if I'm
12 not mistaken.

13 Q Right. And let me just pause there.

14 A Okay.

15 Q Three of them, (V4)---, (V6)-, (V9)---- and
16 (V)----, four of them were all witness statements.

17 A But are they -- are they witness statements I said
18 as a result of his second letter?

19 Q No, you didn't send them, and that's my question.

20 A Okay.

21 Q As to why you wouldn't have sent them.

22 A And are they -- there were four statements to that
23 effect?

24 Q Yes.

25 A Well, all I can think is if I read them, I must



1 statement?

2 A That's right, sir.

3 Q I just want to, a couple of miscellaneous
4 documents here, Mr. Caldwell. First of all, there
5 was a book I think called "The David Milgaard
6 Story," if we could call up 331550, and maybe just
7 go to the next page -- next page, please. Yeah,
8 Carl Karp and Cecil Rosner are the authors of this
9 book. If you could go to page 331591, please, and
10 there's a reference in this book, I think this is
11 around 1992, but I stand to be corrected on the
12 date of the book.

13 A All right.

14 Q And there's just the part here I want to put to
15 you. The authors write:

16 "By mid August the Crown had marshalled
17 a formidable case. The Attorney
18 General's department picked T.D.R.
19 (Bobs) Caldwell to head the prosecution.
20 He was thorough, interviewing a large
21 number of witnesses in an effort to
22 buttress the Crown's case. Tallis,
23 meanwhile, was at a distinct
24 disadvantage. The only potential
25 witnesses were Milgaard's companions on



1 the day of the murder, and they were all
2 scheduled to testify for the Crown.

3 By the time the preliminary
4 hearing began on August 18, 1969, public
5 curiosity was at a high, and the media
6 were quick to exploit the situation.
7 All the elements for a dramatic story
8 were there: A high profile murder, a
9 seventeen-year-old accused, an eye
10 witness account, drug-using teenagers.
11 There were, as yet, no legal
12 restrictions on reporting the testimony
13 at preliminary hearings. The result was
14 a media field-day, with every aspect of
15 the Crown's case reported in full. How
16 this might prejudice a potential jury
17 was of no concern at the time. All the
18 Crown cared about was mounting a
19 convincing and effective case so that it
20 could proceed to trial."

21 And then to the next page, just at the bottom --
22 sorry, back to the previous page, the bottom:

23 "Over the next three weeks, Caldwell
24 called forty-two witnesses -- everyone
25 from the little girl who had discovered



1 Gail Miller's body to police officers
2 who had come into contact with obscure
3 bits of evidence. But for all his
4 efforts, Caldwell could probably have
5 convinced the judge of the need to
6 commit Milgaard to trial with just three
7 people: Albert Cadrain, Nichol John,
8 and Ron Wilson. Here, after all, were
9 Milgaard's friends and companions on
10 that day. All would incriminate him,
11 and all seemingly had no reason to lie."

12 And then down at the bottom of that column:

13 "Caldwell, for his part, was eager to
14 reveal as much as possible. He
15 encouraged his witnesses not to hold
16 back, but to say everything they wanted.
17 As a consequence, some of the Crown's
18 witnesses seemed almost too eager to
19 present evidence that would incriminate
20 Milgaard."

21 And if I could just pause there. I think this
22 reference refers to the evidence at the
23 preliminary hearing and I think at the time of
24 the prelim there was no prohibition on
25 publication of the evidence. I think it was



1 shortly after the prelim that the law changed,
2 within a year or two if I'm not mistaken, and
3 this book might suggest, Mr. Caldwell, that
4 you -- let me ask you this. Did you call
5 witnesses at the preliminary hearing so that you
6 would get more information in the public domain
7 about the case?

8 A Not at all. I tried to call a full preliminary
9 hearing with as many, you know, relevant witnesses
10 as had been assembled at that time, and I think I
11 mentioned earlier there were some definite
12 advantages to that. It had nothing to do with
13 publicizing the case whatever.

14 Q And the authors say that:

15 "Caldwell, for his part, was eager to
16 reveal as much as possible. He
17 encouraged his witnesses not to hold
18 back, but to say everything they
19 wanted."

20 And I'm wondering what your response is to that,
21 sir. Is that true?

22 A Not in that -- no, Mr. Hodson, that can -- I refer
23 I believe to the things I would say to witnesses,
24 if you are sure of something, please say so. If
25 you don't know, say so. If you are not sure, say



1 so, is the standard instruction I probably gave to
2 all but the most minor of those witnesses. That's
3 all I can attribute that to.

4 Q And then if I could, to 269317, and I think this
5 is the book "A Mother's Story" -- 269317 -- and if
6 you can go to page 269370, and there's a reference
7 here to the knife, it says at the bottom:

8 "So many other parts of the Crown theory
9 were far-fetched. Gail Miller was last
10 seen alive between 6:30 and 6:45 a.m.,
11 and David was seen at seven by one
12 witness, leaving a very narrow time
13 frame for him to commit such a crime. I
14 would learn much later about a six-inch
15 knife that the jury wasn't shown.
16 Police found it in the snow on February
17 28, 1969. Its blade was identical in
18 size to the entry sites on Gail Miller's
19 body, and it hadn't been on the snow
20 long, since there was very little rust
21 on it. The knife's location made it
22 highly probable that Gail Miller was on
23 Avenue O, not an Avenue N, as the Crown
24 had argued. However, the discovery of
25 the knife was not disclosed to our



1 lawyers. If he had been told, Tallis
2 could have used it to attack the
3 testimony of Nichol John and Ron Wilson.
4 We would later hear that this second
5 knife somehow went missing from a police
6 officer's locker."

7 And I believe we've touched on this, the date I
8 think is consistent with the date that Ian Oliver
9 found the, I think it's the bone-handled hunting
10 knife, and again, we may have touched on all of
11 this, Mr. Caldwell. Do you know anything about
12 this knife, the second knife being related to
13 Gail Miller being on Avenue O or Avenue N?

14 A No, I don't know where the "may be highly probably
15 that Gail Miller was on Avenue O." The knife was
16 found on the stringer of a fence of the
17 north-south alley, what I would call west of
18 Avenue N, Mr. Hodson, near the body, but on a
19 fence stringer and across the fence in question.
20 I assume that's the same knife.

21 Q Yeah. And was the discovery of that knife
22 disclosed to Mr. Tallis?

23 A I'm sure it was.

24 Q And then do you have any information, sir, about
25 the second knife going missing from a police



1 officer's locker?

2 A No. I think this is the same knife and at some
3 stage of these investigations it's my belief that
4 RCMP officers picked that knife up from Constable
5 Oliver and seized it. I hope I'm correct. That's
6 my memory of it, sir.

7 Q Okay. If we could go to 054461, please, and this
8 is a document "A Portrait of a Canadian
9 Injustice", I'm not sure who the author of this
10 document is, but if you could go to page -- maybe
11 go to the next -- I'm sorry, "Compiled by:
12 Victims of Injustice Cry Enough," August of '91.
13 If we can go to the next page, and actually go to
14 054464, and this is unresolved questions, and if
15 you could go to the next page, please, it says,
16 number 16:

17 "When in 1986, Hersh Wolch, Q.C. and
18 David Asper were first retained by the
19 Milgaard family, within a few weeks, Mr.
20 Wolch received a phone call from the
21 original prosecutor (T.R. "Babs"
22 Caldwell -- "

23 A That's my sister, sir.

24 Q "-- now a Senior Official with the
25 Federal Ministry of Justice) pointing



1 out that it was a complete waste of his
2 time to get involved in this matter."

3 And then the question:

4 "How would he know that Mr. Wolch was
5 involved; and, why so many years later
6 would he take the time to discourage him
7 from defending David and his family?"

8 Do you have a recollection of any call with
9 Mr. Wolch in 1986 of the nature suggested in this
10 note?

11 A I don't, sir. I knew -- I probably met Mr. Wolch
12 at law functions earlier on and the only thing I
13 can suggest is that this may have been part of
14 getting exhibits released for DNA testing as that
15 whole thing evolved. I have some memory that
16 Mr. Fred Dane (ph), as one of my successors as
17 local regional Crown prosecutor, dealt with that.
18 I hope I'm right or close to it. That's the
19 only --

20 Q I'm just wondering, like, do you have a
21 recollection of talking to him in 1986?

22 A Not to Mr. Wolch, but this is the only thing I
23 could think that it could resemble, Mr. Hodson.
24 It may be totally wrong on my part.

25 Q Then if we could go to 040534, this is a



1 document -- oh, sorry -- "Why there must be an
2 inquiry into the David Milgaard miscarriage of
3 justice," and again, I'm sorry, I don't know who
4 the author is, I think it was disseminated
5 publicly, and one of the facts listed here:

6 "FACT: The police and agents of the
7 Attorney General of Saskatchewan - David
8 Milgaard's prosecutors - deliberately
9 withheld this crucial evidence, and took
10 great pains to ensure that this evidence
11 would not come to the attention of David
12 Milgaard or the public generally."

13 And I think that relates to the -- well, it does,
14 if you can scroll up a couple of lines, you'll
15 see the reference to Larry Fisher, and again, I
16 may have touched on this earlier, but with
17 respect to this allegation, Mr. Caldwell, did you
18 deliberately withhold evidence or information
19 about Larry Fisher from either David Milgaard or
20 the public generally?

21 A No, sir.

22 Q Scroll down to the bottom, the fourth last bullet,
23 it says:

24 "FACT: The Saskatoon assault charges
25 were transferred to Regina instead of



1 being dealt with in Saskatoon, at the
2 request of the prosecutor at David
3 Milgaard's trial, T.D.R. Caldwell."

4 Was it your request, sir, that the charges
5 against Larry Fisher be dealt with in Regina
6 rather than in Saskatoon?

7 A No. That, I think, can only refer to the Corey
8 phone call, but I certainly did not make any
9 suggestion that they be dealt with in Regina
10 instead of Saskatoon, sir. That's the only thing
11 I can attribute that to.

12 COMMISSIONER MacCALLUM: No idea of the
13 authorship, Mr. Hodson?

14 MR. HODSON: No, I suspect at some point
15 we'll find out who -- nothing on the document --
16 I'm sorry, yeah, next page, down at the bottom,
17 the David Milgaard support group.

18 COMMISSIONER MacCALLUM: Oh.

19 MR. HODSON: And I suspect we may hear some
20 more evidence on that.

21 BY MR. HODSON:

22 Q And then if we can go to 048350, and this is a
23 document I think from David Milgaard's -- or Joyce
24 Milgaard's disclosure. Again, I'm not sure who
25 the author is, but I expect we'll hear evidence on



1 this, miscellaneous points to remember, and if we
2 could go to 048353, the question here:

3 "If Caldwell had been told that Cadrain,
4 Mrs. Miller and Mary Marcoux overheard
5 Nicol, "I don't know why he didn't kill
6 me too. I was right there, and saw it
7 all, but I'm not going to say nothing."
8 Why was that not brought out in the
9 cross exam of Nicol?"

10 I think I've asked you that question at least a
11 couple of times, Mr. Caldwell.

12 A Yeah.

13 Q And any different answer this time?

14 A No, sir. I didn't think it could be done,
15 technically speaking, and I hope I said that
16 before, but no, I don't have a different answer.
17 I would have thought, Mr. Hodson, for instance, it
18 might involve me having to testify as the one who
19 reduced her statement to writing in 9(1). That
20 didn't seem practical at the time.

21 Q And I think we can go to -- if I can call up
22 170404, this is a document, I think by Mr. Wolch
23 or Mr. Rodin, an overview and analysis of David
24 Milgaard's civil claim against you, if we can go
25 to 107407, and again we will hear evidence later



1 as to where this document may have been sent, if
2 anywhere. I just want to go through some of the
3 suggestions in here, Mr. Caldwell.

4 A Very good.

5 Q I should point out in number 4 there's a comment
6 that says:

7 "It must be born in mind that Mr.
8 Milgaard's civil claim is very much a
9 work in process."

10 And then at the top, I think the position is
11 that:

12 "David Milgaard's wrongful conviction
13 and imprisonment occurred because of
14 misconduct, not mistakes."

15 And then if we can go to page 170415, a couple of
16 comments here:

17 "There is a great deal of direct
18 evidence indicating that Caldwell was
19 well aware of Larry Fisher and of his
20 crimes at the material time. In
21 addition, there is a great deal of other
22 evidence from which this inference can
23 be drawn.

24 This evidence is significant
25 because it also indicates that Caldwell



1 is not credible in his denial that he
2 had this knowledge. The only reasonable
3 inference to be drawn in the
4 circumstances is that Caldwell has a
5 consciousness of his guilt and is
6 fabricating his evidence to avoid being
7 held accountable."

8 And I don't want to get into a debate with you,
9 Mr. Caldwell, about what is here, but I do wish
10 to put that suggestion to you and ask for your
11 response.

12 A All right, sir. That's just simply not the case,
13 and was not the case.

14 Q 170425, it's suggested in paragraph 81:

15 "The evidence is overwhelming that
16 Caldwell knew about Fisher's crimes at
17 the time he prosecuted Mr. Milgaard, at
18 the time he gave his statements to the
19 RCMP and at the time of his examination
20 for discovery."

21 And I think we've covered this before, Mr.
22 Caldwell, your response to that suggestion?

23 A That's incorrect, sir, completely, in my view.

24 Q If you had been aware of the three sexual
25 assaults, (V1)-, (V2)-----, (V3)-----, would you



1 have disclosed that to Mr. Tallis?

2 A I think I have indicated I would previously, Mr.
3 Hodson, if I'm not mistaken.

4 Q Go to 170428, paragraph 90, it says:

5 "There is no suggestion in the evidence
6 that at the time of the Miller murder
7 the City of Saskatoon was plagued by
8 other serial rapists. Since Caldwell
9 clearly knew that a single perpetrator
10 was being associated with the series of
11 rapes in Saskatoon which occurred at
12 around the time of the Miller murder,
13 and since the only series of rapes that
14 he knew about at the material time were
15 those that were referred to in the
16 Milgaard prosecution file, it is
17 inconceivable that he could have
18 believed Larry Fisher was responsible
19 for some other series of rapes which had
20 no connection to the Miller murder."

21 And again, just a question about this single
22 perpetrator theory for the rapes, were you aware
23 of that back in 1969?

24 A No, sir, I wasn't.

25 Q I want to go ahead, Mr. Caldwell, to July 16th,



1 1997, which was the date that DNA results were
2 made public regarding some tests that some
3 scientists did to compare physical evidence on
4 Gail Miller's clothing compared to Larry Fisher,
5 David Milgaard, and I think Dennis Elliott's
6 bodily substance. And we've heard evidence about
7 that and the result of that was to match the, I
8 think, to effectively match the physical evidence
9 on Gail Miller's clothing to Larry Fisher's DNA,
10 and you will recall becoming aware of that?

11 A Yes, sir, I did.

12 Q Prior to learning that information, Mr. Caldwell,
13 was it your view that David Milgaard had committed
14 the murder of Gail Miller?

15 A It was, sir, right up until that time in --
16 clearly.

17 Q And can you tell me, sir, what was your reaction
18 when you heard about the results of the DNA
19 evidence?

20 A Well, if my memory is correct, I believe it was
21 Murray Brown of our department in Regina who
22 phoned me and started by asking me if I was
23 sitting down, and I did sit down, and Mr. Brown
24 told me what the result of the DNA evidence was
25 and I very likely said "you're kidding", or



1 something like that. Not meaning to be facetious,
2 I was absolutely floored by that piece of
3 information, because I clearly believed in the,
4 you know, the guilt of Mr. Milgaard all along, and
5 up to that point I -- you know, it was just an
6 absolutely shocking piece of evidence, and I -- to
7 be -- needless to say, I don't quarrel with it
8 being the correct evidence, in other words I'm
9 sure that was correct.

10 Q Right.

11 A Yeah.

12 Q But, again, your reaction; can you tell us what,
13 if anything, did you do as a result of that?

14 A Well I must have -- I expect I would have been
15 interviewed by people, you know, to do with
16 bringing the investigation up. The civil action,
17 it put that into gear very quickly to get it
18 settled, and I -- Mr. Hodson, I would mention a
19 paragraph that Mr. Kujawa held an -- pardon me --
20 Mr. Halyk, in his library July 21st, 1997, on
21 behalf of myself and Serge Kujawa --

22 Q Sorry, sir, was this the --

23 A Yes, it's just the one paragraph that I wanted to
24 mention, if you --

25 Q Okay. What are you referring to? Is that the



1 press release document?

2 A It's -- it says "For Release", it's a three-page
3 --

4 Q If we could maybe call up 332039.

5 A Yeah, I see that number now, sir.

6 Q Yeah. And maybe just wait until it's up on the
7 screen.

8 A Good.

9 Q Now, before we get to that, --

10 A Okay.

11 Q -- I take it, sir, did you arrange to have a
12 public statement made on your behalf?

13 A Yeah, Mr. Halyk arranged that, sir.

14 Q And is this the document, I think, that I was
15 provided this morning; is this the document that
16 was released to the media?

17 A I'm sure it was. I have a copy myself.

18 Q And the first paragraph says, 'The first and most
19 important statement my clients Serge Kujawa and
20 Bobs Caldwell want to make today is that they both
21 extend their sincerest apologies to David
22 Milgaard, his family, and all others directly
23 affected, for the failing, for the system that
24 resulted in his wrongful conviction. They fully
25 understand that there is nothing that they can say



1 today that will ease the horrible injustice and
2 pain that has been inflicted on David Milgaard and
3 his family by the wrongful conviction.'

4 A Yeah.

5 Q And, 'As you know, my clients presently remain
6 under the cloud of a civil lawsuit commenced
7 before the definitive determination of the
8 innocence of David Milgaard. Since this remains
9 an active file I have instructed my clients not to
10 discuss the matter further, except in the context
11 of a determination of this lawsuit and/or an
12 official public inquiry.'

13 And, if we can go to the next
14 page, it says, 'That being said ...', it talks
15 about a report of the Supreme Court, 'My clients
16 have instructed me to join with David Milgaard,
17 his family and others in requesting that the
18 Minister of Justice for Saskatchewan take
19 immediate steps to direct a full Judicial Inquiry
20 into all of the circumstances and factors that
21 resulted in the wrongful conviction of David
22 Milgaard. We ask that this decision by him be one
23 that includes an instruction that the Inquiry be
24 held as soon as reasonably practical'?

25 Again, I don't presume to go



1 through it; is this a document that would have
2 been sent out on your behalf, sir?

3 A Well it would have been read by Mr. Halyk to that
4 meeting, which was a fair number of press people
5 and others in his library at that time, and I
6 assume was sent out. And I can expand on that if
7 you like, sir, without reading the document.

8 Q Sure, if you --

9 A Yeah. I, again, was absolutely floored by the
10 scientific results that came to light about that
11 time of the DNA which beyond any doubt I would
12 think, you know, identified Fisher as the villain
13 in this episode. I accept them completely. I was
14 utterly shocked by the fact that, if you will,
15 the -- not how the case turned out but it got that
16 far without the -- this having come to light. I
17 have -- don't know how it could have any sooner
18 but, in any event, it did at this time. And I
19 certainly, you know, add my own personal apologies
20 in person to all the people who were, you know,
21 damaged, offended, hurt, etcetera, by the
22 prosecution at that time.

23 Q Mr. Commissioner, it's 4:30, I think I am
24 finished, I'm waiting for one document from the
25 parole board that I should get tonight. If I do



1 have any further questions they will be very
2 brief. This may be a good time.

3 COMMISSIONER MacCALLUM: Thanks.

4 *(Adjourned at 4:28 p.m.)*
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OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATES:

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contain a true and correct transcription of our shorthand
notes taken herein to the best of our knowledge, skill,
and ability.

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Karen Hinz, CSR

Official Queen's Bench Court Reporter

_____, RPR, CSR

Donald G. Meyer, RPR, CSR

Official Queen's Bench Court Reporter



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